



Courtroom Deputy: Elizabeth Penski

Law Clerks: Michael Mayer, Callum Morris

Also Present: Roger Dean Gillispie, plaintiff; Valerie Barajas, paralegal; Matt Thibodeau, paralegal; Jeff Weber, IT

## INDEX OF WITNESSES

### PLAINTIFF'S WITNESSES

#### BRIAN POULTER

Direct Examination by Mr. Owens	1202
Cross-Examination by Mr. McLandrich	1229

#### JIM OSBORNE

Direct Examination by Ms. Porter	1230
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#### MARK GODSEY

Direct Examination by Mr. Owens	1243
Cross-Examination by Mr. McLandrich	1309
Cross-Examination by Ms. Frick	1316
Redirect Examination by Mr. Owens	1319
Recross-Examination by Mr. McLandrich	1322
Further Redirect Examination by Mr. Owens	1324

#### JUANA GILLISPIE

Direct Examination by Mr. Owens	1332
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1 P-R-O-C-E-E-D-I-N-G-S 9:29 A.M.

2 (Jury in at 9:28 a.m.)

3 (In open court at 9:29 a.m.)

4 THE COURT: Ladies and gentlemen, good morning.  
5 Hopefully you had a good evening, got some rest. Everybody  
6 was able to abide by my admonitions, correct? Anybody that  
7 was not?

8 (No verbal response.)

9 THE COURT: Ladies and gentlemen, I do apologize for  
10 getting started a little bit late here today. As I indicated  
11 to you, on occasion -- and that may become more frequent as we  
12 get towards possibly the end of the process -- we may take a  
13 few breaks or not move in accordance with what I hoped to with  
14 scheduling just because the fact that it is necessary for me  
15 to deal with some things outside your presence. So please  
16 understand that we're not wasting time, but counsel and the  
17 Court are attempting to resolve matters which will -- which  
18 will move the case along.

19 We still plan -- my plan is, as I indicated to you  
20 originally, I've indicated that the trial, we will move the  
21 trial along as quickly as we can, of course respecting  
22 everyone's, all the parties' right to be fully represented and  
23 have a full and fair hearing.

24 However, as I indicated to you, if this case would happen  
25 to go into next week, we will be meeting one day next week,

1 Monday. If the case would happen to go beyond Monday of next  
2 week, we will then reconvene the Monday following after  
3 Thanksgiving. I am not -- I am not saying that's going to  
4 happen, but I want for your purposes of planning and just to  
5 keep that all in mind. I'm not going to interrupt your  
6 Thanksgiving vacation, if that -- vacation or celebration or  
7 travel, whatever. As much as I can, I won't interrupt it, but  
8 I just wanted to give you an idea of what the Court's -- I  
9 don't know how the case is going to unfold. I don't know how  
10 fast, or I don't know whether there is going to be delays. I  
11 just don't know. So I'm trying to give you as clear a map as  
12 I can. So there you go. I don't have anything else.

13 All right, counsel. We're on the record. Counsel ready  
14 to proceed?

15 MR. OWENS: Yes, Your Honor.

16 THE COURT: Counsel?

17 MR. McLANDRICH: Yes, Your Honor.

18 MR. HERMAN: Yes, Your Honor.

19 THE COURT: First witness.

20 MR. OWENS: We've got -- next witness called by the  
21 plaintiff will be Brian Otis Poulter.

22 **BRIAN OTIS POULTER, PLAINTIFF'S WITNESS, SWORN**

23 THE COURT: Mr. Poulter, please try to keep your  
24 voice up so we can all hear your responses to the questions.  
25 You have your microphone there, and as you can see, you can

1 utilize it as you wish. I think it moves around. You can  
2 move it closer, move it away. If it gets too close, it  
3 muffles; if you get away, it won't pick you up.

4 THE WITNESS: Okay.

5 THE COURT: One way to -- there you go. I think you  
6 have a good, strong voice. One way to resolve that problem is  
7 just keep your voice up in answering, all right?

8 THE WITNESS: Yes, sir.

9 THE COURT: You may inquire.

10 **DIRECT EXAMINATION**

11 BY MR. OWENS:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. Would you please just state and spell your name for the  
15 record?

16 A. My name is Brian Otis Poulter, B-R-I-A-N O-T-I-S  
17 P-O-U-L-T-E-R.

18 Q. Where do you work?

19 A. I'm a driver for United Parcel Service.

20 Q. UPS?

21 A. Yes, UPS.

22 Q. How long have you been -- worked at UPS?

23 A. Going on my 37th year.

24 Q. Did you say 37?

25 A. 37.

POULTER - DIRECT (Owens)

1203

1 Q. And so when did you start that job?

2 A. March of 1986.

3 Q. And where do you live?

4 A. Fairborn, Ohio.

5 Q. And how long have you lived in Fairborn?

6 A. Pretty much my whole life. I moved away in 1991 for  
7 three years. I moved to West Carrollton.

8 Q. Okay. Did you grow up in Fairborn?

9 A. Absolutely.

10 Q. Did you grow up -- what high school did you go to?

11 A. Fairborn High School.

12 Q. Do you know a person named Dean Gillispie?

13 A. Yes, I do.

14 Q. Who is Dean Gillispie to you?

15 A. A very good friend. We have known each other since  
16 ninth grade. Been very good friends since then.

17 Q. And have you remained good friends over the past 30  
18 years?

19 A. Absolutely.

20 Q. So let's rewind a little bit. What year did you graduate  
21 high school?

22 A. 1984.

23 Q. And were you and Dean -- did you have a group of friends  
24 you all regularly hung out with?

25 A. Yes.

1 Q. Can you name some of those folks?

2 A. Richard Winters, Scott Bowling, Tony Rice. There was a  
3 lot of -- a lot people that we hung -- probably ten. John  
4 Coppock, Chuck Taylor. Quite a few tight-knit guys.

5 Q. Got it. And when you weren't at school, what sorts of  
6 things would you all get into?

7 A. You know, we just did -- ran around a lot, drove around  
8 town. What we called making laps. We would drive around  
9 town, see who's out. Stop and talk to people.

10 Later on, you know, Dean and I really became really  
11 close. I got out of a relationship with one of my  
12 girlfriends, and Dean and I were -- we were very close. We  
13 were almost inseparable.

14 Q. Yeah. And sort of what period of time was that when you  
15 and Dean were almost inseparable?

16 A. From probably 19 -- late 1985, '86. We -- you know, I  
17 got out of a relationship, and Dean and I just -- we just  
18 really just liked to run around.

19 Q. So between 1986 and 1990, you guys were pretty much  
20 inseparable; is that right?

21 A. Yes, that's correct.

22 Q. Now, were you the hunting and fishing type?

23 A. Unfortunately, I wasn't raised that way. My dad didn't  
24 do that kind of stuff, but they kind of called me the City  
25 Slicker or whatever. I mean, you know, a lot of the guys

1 that he ran around with, they would fish and stuff, and they  
2 still do, but that was just something didn't interest me.

3 Q. They called you the City Slicker of Fairborn?

4 A. Well, I don't know about Fairborn, but of the group,  
5 you know. I mean, I was -- I guess I just -- that wasn't my  
6 cup of tea.

7 Q. Got it. And were you familiar with Dean's family?

8 A. Yes.

9 Q. And who were his parents?

10 A. Roger Gillispie and Juana Gillispie.

11 Q. And how'd you know them?

12 A. Well, me and Dean become so close, I spent a lot of  
13 time at their house. And, you know, just general  
14 conversation, hanging out with them, BS'ing. You know, it's  
15 just what you do when you have a good friend.

16 Q. Got it. So I want to move forward a little bit.

17 Dean was arrested in 1990. Do you recall that?

18 A. Yes, I do.

19 Q. And what do you remember sitting here today about the day  
20 that he was arrested?

21 A. Okay. So me and a very good friend of me and Dean's  
22 also, Charlie Tallent, we were out running around, went by  
23 Dean's. So pull up to Dean's and get out, and he's sitting  
24 on his front porch. He's whittling on a piece of wood or  
25 something. And we were just, you know, more or less BS'ing.



1 And I was like, "Hey, we are going to go to Taco Bell. Do  
2 you want to come?"

3 And he goes, "Nah, I'm just going to sit here. I just  
4 cooked me something to eat."

5 So Charlie and I left and went to Taco Bell, which is  
6 maybe five minutes away from Dean's house at the time. And  
7 so we were probably gone about 20 minutes. And there is a  
8 building by Dean's house that he lived in, had a drive-thru,  
9 kind of like had a tunnel that you drove through, and you  
10 could drive through that building and almost drive straight  
11 into Dean's house.

12 So Charlie and I came back from Taco Bell, and we went  
13 through what we called the Bat Cave and pulled through. And  
14 we were like, "What the heck?" We pulled up, and there were  
15 several police cars and it looked like maybe unmarked police  
16 cars and several people standing outside on Dean's porch and  
17 in front of his porch.

18 And we were like, "Holy crap. What's going on."

19 So we parked and got out, and we were approached by a  
20 police officer. And he says, you know, "Can I help you?"

21 And I said, "Yeah, this is our good friend. What's  
22 going on?"

23 And they were like, "Well, your friend's okay, but you  
24 have to leave. You can't come up here."

25 And we were, like, wow.

1           So, of course, we were concerned. We went to Juana and  
2 Roger's house. And we were like, Juana, there is something  
3 going on. We need to -- you know, you need to go see --  
4 Dean's in trouble apparently.

5           So I think we actually picked Juana and picked her and  
6 dropped her off there. And, of course, when she got there,  
7 I don't think there was a police officer that was going to  
8 stop her from getting on the porch to her son. So Charlie  
9 and I sit there for a couple minutes, and then we took off.

10       **Q.**   Got it. And so I just want to break that down a little  
11 bit. At the time, where did Dean live?

12       **A.**   312 Spruce.

13       **Q.**   And where did Roger and Juana live?

14       **A.**   1512 Glendale.

15       **Q.**   How far apart are those two houses?

16       **A.**   Five minutes max.

17       **Q.**   And do you know who owned the house that Dean was at on  
18 Spruce Street?

19       **A.**   Yeah, Dean did. He had bought it.

20       **Q.**   Now, the day that Dean was arrested, did you see how he  
21 responded to -- did you get to see him in that moment when he  
22 was arrested?

23       **A.**   I believe that he was -- when, you know, we had got out  
24 of the car, I believe that he was on the porch, and he might  
25 have been in handcuffs. I really -- I just know that we

1       seen him on the porch, and I don't know if he was  
2       handcuffed, but then I think they took him in the house.

3       **Q.**     Sure. Now, at some point after Dean was arrested, did  
4       you learn that the crimes he was accused of participating in  
5       took place in 1988?

6       **A.**     Yes.

7       **Q.**     And we will sort of talk about --

8               MR. OWENS: One second, Judge.

9               Sorry, Your Honor.

10              THE COURT: No problem.

11       BY MR. OWENS:

12       **Q.**     So one of the days where -- that Dean was -- one of the  
13       crimes had happened on August 5, 1988. Does that sound  
14       familiar?

15       **A.**     Correct.

16       **Q.**     The date, you know, when Dean was arrested, two years  
17       later in 1990, did you know right that second where you were  
18       on August 5, 1988?

19       **A.**     Obviously, no.

20       **Q.**     And were you with Dean on August 5, 1988?

21       **A.**     Yes.

22       **Q.**     How did you go about figuring that out?

23       **A.**     Pretty much came to me from my mind being refreshed  
24       from a journal that a girl that we knew had. She had like a  
25       day planner, I think it was, and she had marked the date in

1 that day planner of a party that we had attended.

2 Q. And who was the girl who had the calendar or planner?

3 A. Marie Woods.

4 Q. And who is Marie Woods?

5 A. She was a girl that Dean and I had went to school with.

6 We graduated the same class. A good friend. She was in

7 college, Boston University I believe, at the time.

8 Q. And you said that she had a calendar that indicated some  
9 kind of party?

10 A. Yes. The party was actually on August 6th.

11 Q. Got it. And you used that calendar to refresh your  
12 recollection about where you were that weekend?

13 A. Yes.

14 Q. And do you remember the events of that weekend?

15 A. Yes, I do.

16 Q. Okay. And can you tell us anything about what stands out  
17 in your memory today about that weekend?

18 A. Well, that Thursday, Dean and I had met up with Marie  
19 and were hanging out, and then we decided we were going to  
20 see a movie. So Dean, myself, Marie, and another friend of  
21 ours, Gilbert Lures, that Thursday we went to go see the  
22 movie "Cocktail." So we went to the movie and decided we  
23 would go to a nightclub down on 725, I believe, in  
24 Washington Township. It was called Safaris.

25 Really nothing happening. So we actually left there

POULTER - DIRECT (Owens)

1210

1 and went to the Cutters Pub, which was a local college bar  
2 there by Wright State. And at the time I was a part-time  
3 employee of UPS, and I worked early in the morning. So it  
4 wasn't a very late night for me. And I ended up going home.

5 So the following -- the following day, probably, I  
6 guess around 4, 5 o'clock, 6 o'clock, something, I had  
7 gotten a new Volkswagen Bug from Dean, or a Volkswagen  
8 convertible I had bought.

9 I picked Dean up, and he and I were riding around. And  
10 it's like, "Hey, let's go by Lisa Glasser's house. She is  
11 home from college." And I am, "All right."

12 So we went to Lisa's and got to her house and was  
13 talking to her and her boyfriend and stuff, and her  
14 boyfriend left. So Dean and I hung out there for a little  
15 while and might have had a beer or so, maybe two.

16 And then probably around, you know, 9, 9:30, we left  
17 there. And Dean and I liked to go to Bourbon Street, which  
18 was a bar down on Woodman Drive in Dayton. He and I left  
19 there around 9:30 and went to Bourbon Street. And typically  
20 when we would go to Bourbon Street, you know, we stayed  
21 there till it closed.

22 Q. Okay. Can I just stop you right there?

23 A. Yeah.

24 Q. And I'll let you finish in a minute.

25 A. Okay.

POULTER - DIRECT (Owens)

1211

1 Q. So I think you said on August 5th of 1988 you worked  
2 early that morning; is that right?

3 A. That would have been -- yes, yes, correct.

4 Q. Friday, the 5th?

5 A. Yes.

6 Q. All right. And what time was it that you mentioned that  
7 you picked up Dean?

8 A. Probably after 4, a little bit after 4. He, you know,  
9 if he worked -- or generally he would get off at like 3,  
10 3:15. And I think probably went, maybe had a bite to eat  
11 before we went to Lisa's. So probably between 4 and 6 we  
12 were probably at Lisa's house, 6:30 maybe.

13 Q. Got it. And who is Lisa again?

14 A. Lisa Glasser is another classmate of ours. She is a  
15 little bit younger than we were but, you know, a friend from  
16 school.

17 Q. And you said you went from Lisa's, and you were there for  
18 a few hours and went to Bourbon Street; is that right?

19 A. Correct.

20 Q. Was there any particular reason you all went to Bourbon  
21 Street on Friday nights?

22 A. Well, generally, Friday nights was the most popular  
23 night there, very crowded. And they had a drink special  
24 that Dean and I liked to drink. It was a Long Island Iced  
25 Tea for \$1.50. So, you know, that really -- but the main

1 thing was that was the best night to be there, but the cheap  
2 drinks were nice too.

3 Q. Got it. Now, you mentioned something about drinking.  
4 Was Dean a big drinker at that time?

5 A. Not really. I drank more so than he did. But not  
6 necessarily a big drinker, no.

7 Q. Okay. And do you remember anything else that happened  
8 that weekend after the 5th? On the 6th?

9 A. Yes, on the 6th. Of course, that's how I recollected,  
10 you know, what was going on at that time in my life two  
11 years, you know, after the fact.

12 You know, Lisa told us that night we were there that  
13 she was going to have -- a girlfriend was coming home to  
14 spend the weekend with her because her parents were out of  
15 town. She's like, "I'm going to have a party."

16 And I'm like, "Okay, we'll be there," you know.

17 So that following -- that following, on the 6th, you  
18 know, Dean and I and Ray went to Lisa's house. And, you  
19 know, we were having and playing a couple drinking games and  
20 quarters and what have you and, you know, just having a good  
21 time. And it's kind of unique, her parents had a big pit  
22 couch. And we were on the couch just messing around, and I  
23 accidentally stood up and stuck my hand. And there was a  
24 fan there, and I broke one of the fan blades.

25 You know, that kind of, you know, silly of me to do

POULTER - DIRECT (Owens)

1213

1 but, you know, we -- we ended up hanging out there. And  
2 then Marie and I kind of, you know, had a lit bit to drink,  
3 feeling good, feeling each other, so we kind of had some  
4 kisses and made out a little bit. And that's how I  
5 remember, you know, when she recollected the date in her day  
6 planner, and I'm like, I absolutely remember that.

7 Q. Got it.

8 A. She was a very beautiful woman.

9 Q. So two years later you had remembered breaking a fan and  
10 making out with Marie at the party; is that correct?

11 A. That's correct.

12 Q. Now, just to be clear, did you ever have any other  
13 parties or attend any other parties at Lisa Glasser's house?

14 A. No, that's the only party that I attended there.

15 Q. And do you know, do you remember where Lisa Glasser's  
16 house is in Fairborn?

17 A. Yes.

18 Q. Where is it?

19 A. She lives on -- I live at 1401 Court Ridge Lane or  
20 Court Ridge Court. She lives -- her parents live catty-  
21 corner to my house that I live in now. So I see her mother,  
22 you know, frequently.

23 Q. Did they ever forgive you for breaking the fan?

24 A. Yeah. Well, I don't know if they knew that I did it or  
25 I don't know how Lisa played that out, you know. I never



POULTER - DIRECT (Owens)

1214

1 heard anything about it.

2 Q. Got it. So back in 1990, so we talked about August 5th  
3 weekend.

4 A. Yes.

5 Q. Do you also find out that one of the crimes that Dean had  
6 been accused of committing took place on August 20, 1988?

7 A. Yes.

8 Q. And were you with Dean at the time that those crimes'  
9 committed that weekend?

10 A. Yes.

11 Q. And did you remember that, the minute that Dean got  
12 arrested, this is where I was on August 20, 1988?

13 A. Absolutely not.

14 Q. And just keep your voice up.

15 A. Okay. Sorry.

16 Q. No problem. And so how'd you go about sort of refreshing  
17 your memory about where y'all were on August 20, 1988?

18 A. The way that I recall that was there was a notebook  
19 that a man named Homer Fyffe had, a little notepad. And on  
20 that weekend, he had noted that a hunting dog that he had  
21 had pups.

22 Q. And so what about, you know, some guy named Homer Fyffe  
23 having pups on a weekend, why was that significant to you?

24 A. Well, what had happened, that weekend Dean and I had --  
25 Dean, myself, and another good friend of ours, maybe ten

1 years older than Dean and myself, his name was Jerry Fyffe.  
2 Well, in that time frame, we went to Morehead, or Cave Run  
3 Lake in Morehead, Kentucky. We went there quite a bit. If  
4 we weren't -- you know, had something planned, probably  
5 twice out of the month we were at the lake.

6 **Q.** And did you have a routine that you would follow when you  
7 would go down to the lake in Kentucky?

8 **A.** Yeah. Like I said, I was a part-time employee at UPS.  
9 So, generally, I would get off work at 9 a.m. Sometimes I'd  
10 come home, take a nap. But, typically, Jerry was off. He  
11 worked third shift, I believe. So he would be off Friday  
12 morning. And I think Dean's schedule at the time was kind  
13 of revolved. I think he covered different shifts. And  
14 sometimes he would, you know, work the first shift; he could  
15 be at 3:15, I think's when he got off.

16 You know, we would typically leave midafternoon. Jerry  
17 would come and pick me and Spiz up. And he had a big four-  
18 wheel drive truck, and it was his boat. He'd pick us up,  
19 and Dean and myself would give him gas money, and gas money  
20 for the boat. And we would go down to a campground, Twin  
21 Knobs there at Cave Run, and we would camp and boat for the  
22 weekend.

23 **Q.** And so what was your routine when you'd come back?

24 **A.** Like I said, typically, we would probably get to the  
25 lake, you know, maybe 6 or 7 on a Friday evening, and we

POULTER - DIRECT (Owens)

1216

1 would stay till, you know, early afternoon. You know,  
2 typically, we would have to, you know, load the boat up on  
3 the Sunday morning or -- Sunday morning, late morning, but  
4 we always stayed, you know, till Sunday. And usually got  
5 back home, you know, it would be late afternoon, early  
6 evening.

7 Q. And so help me tie this together with the pups. How does  
8 that stand out in your head related to August 20, 1988?

9 A. Okay. So that weekend, we, you know, were at the lake.  
10 And so we're -- we pull up to Jerry's house. He lived in a  
11 farmhouse on State Route 235 there outside of Fairborn. And  
12 we pulled up and noticed Homer's truck was there. And, you  
13 know, we get out and start getting our gear out of the  
14 truck.

15 And, you know, Jerry walks over and talks to his dad.  
16 And we go over and notice that there was a dog, you know, a  
17 hunting dog that had had pups. And, you know, mid, late  
18 August, it's pretty hot. And it was very hot that day. And  
19 we saw the dog, and the dog had dug a fairly large hole in  
20 the ground and had moved all the pups into the hole -- I'm  
21 assuming it was under a shady tree -- to keep them cool.

22 And, you know, for me, my family didn't have pets as a  
23 child growing up, and to me that really stood out, you know.  
24 I was like in awe, you know. That was pretty cool to see.

25 Q. The City Slicker and not a dog person?

1 A. Well, you know, I got to blame it on my parents, I  
2 guess.

3 Q. All right. Now, I think I just want to cut to the chase  
4 a little bit. You testified about the stuff that you're  
5 talking about right now about August 5th and August 20th at  
6 Dean's, both of Dean's trials, correct?

7 A. That's correct.

8 Q. Do you have any doubts that you were with Dean Gillispie  
9 on August 5th, the evening of, in 1988?

10 A. None whatsoever.

11 Q. Would you have testified to that if you weren't sure when  
12 you testified at his trials?

13 A. I would not.

14 Q. Do you have any doubts that you were with Dean on August  
15 20, 1988?

16 A. I do not.

17 Q. Would you have testified to that at his trials if you had  
18 any doubts?

19 A. Absolutely not.

20 Q. Now, by the time that Dean was convicted in 1991, that  
21 was -- you guys were pretty close friends, right?

22 A. Absolutely.

23 Q. What was Dean's sort of attitude like before he was  
24 convicted, after he was arrested, in those few months?

25 A. Honestly, to be -- what he was looking at, he was

1 very -- he was very confident. He didn't seem scared, like  
2 I think I would feel. You know, he was confident in his  
3 innocence, I believe. You know, he -- he knew this was  
4 something that he didn't do, and he felt that he had, I  
5 believe, a good case and a good attorney; that, you know, he  
6 had nothing to hide.

7 Q. And so how did it impact you and your group when Dean was  
8 convicted?

9 A. It was tough. You know, it's a hard thing when you can  
10 watch something on TV and watch someone, but when you're  
11 actually affected by the results of something, it was  
12 devastating for all of us guys. Well, I mean, for everyone.

13 Dean had a lot of -- a lot of friends, a loving family,  
14 and it was -- it was terrible. It was heartbreaking, you  
15 know. Dean and I were like brothers. I never had a  
16 brother. And it was like losing a family member, honestly.

17 Q. Did you stick by your family member, Dean, over the next  
18 20-some years while he was in prison?

19 A. Absolutely.

20 Q. And are you married?

21 A. Yes.

22 Q. How long have you been married?

23 A. I got married in 1991.

24 MR. OWENS: Your Honor, I'd like to show the witness  
25 what's been marked as Exhibit 284, at page 5.

1 THE COURT: That's been --

2 MR. McLANDRICH: It hasn't been shown, but if I  
3 understand what it is, I don't have an objection.

4 THE COURT: Do you want to see it first?

5 MR. McLANDRICH: I'm pulling it up now.

6 MR. OWENS: I gave it to him.

7 MR. McLANDRICH: Yeah, that's fine.

8 MR. HERMAN: No objection.

9 MR. OWENS: We can just put it on the screen. Thank  
10 you.

11 (Exhibit displayed.)

12 BY MR. OWENS:

13 Q. All right, Brian. Could you please just let us know what  
14 this picture is?

15 A. So this is my wedding day, and people here, of course,  
16 came to celebrate me and my wife getting married, Tina. And  
17 we just wanted to let Dean know that we hadn't forgot about  
18 him and that we loved him and, you know, we wished he would  
19 have been there with us.

20 These are -- this group of guys you see here was the  
21 group of guys that we ran around with. This was -- this was  
22 the 10 to 15 guys that I, you know, I told you, that we were  
23 a close-knit group.

24 Q. Got it. I want to just direct your attention to this  
25 sign that says "Dean, we love you." Do you see that?

1 A. Yes.

2 Q. And what are all the names that are on this?

3 A. Those are all the guys, you know, that -- this is the  
4 people that love Dean. You know, we all, every person on  
5 that -- on that picture has a direct relationship with him.

6 MR. OWENS: You can take that down, thanks. Leave  
7 the picture but take out the focus.

8 BY MR. OWENS:

9 Q. So -- I'm sorry. I forgot to ask you, when did you get  
10 married? I won't hold you to the date. Do you remember the  
11 month and the year?

12 A. Yeah, it was September 14th of 1991.

13 Q. So this was just a few months after --

14 A. Yes.

15 Q. -- Dean had been arrested?

16 A. That's correct.

17 Q. How many kids do you have?

18 A. I have three children.

19 Q. And before Dean was released from prison, did your -- did  
20 any of your children get to know or meet him?

21 A. Yeah, all my kids went to go see Dean when he was in  
22 prison. The way that the visitations are set up, typically,  
23 is parents and his family would go through the week, and  
24 they would save the Saturday and Sunday visits for the  
25 friends that Dean had on his list because there was X amount

1 of people that would come and see him. You'd have to be on  
2 the list to be approved and all that stuff.

3 So never at one time did me and my whole family get to  
4 go and see him at the same time. It was typically, you  
5 know, me and one child and then some two or three of our  
6 friends, we'd all go together.

7 Q. How often would you visit Dean in prison?

8 A. I -- we were able, if you were on the list -- I wasn't  
9 on the list. I was kind of special. But I always could go  
10 see Dean twice a month.

11 Q. What do you mean when you said you were kind of special?

12 A. Well, I was -- somehow, I was considered family, you  
13 know. And he didn't have to put me on that list. So, you  
14 know, and I think when you bring a child, they are not  
15 considered a person on the list, you know. So I could  
16 always bring one of my kids and, you know, have friends  
17 there, 'cause everybody, you know, loved going to see him.  
18 They want to support him.

19 Q. So did you get to see Dean more frequently than some of  
20 your other friends?

21 A. I got to see Dean the most out of anyone, I believe,  
22 besides his parents.

23 Q. So I want to fast forward a little bit. What happened  
24 the day that Dean was released from prison? Do you recall  
25 that?



1       A.     Yes, I do.

2       Q.     And just briefly, can you sort of just briefly describe  
3     what happened that night?

4       A.     It was a Thursday, I believe. It was December 22nd of  
5     2011. I was at work and got a -- got a text that, you know,  
6     Dean might be getting out of prison. I'm like, you got to  
7     be kidding me. Here I am at work.

8             Anyways, fast forward, I really blew through my day to  
9     get off work, big hustle to get there. A bunch of --  
10    Gilbert, Charlie, myself, Richie, Gilbert, we had got on the  
11    phone talking to each other. We were going to get a -- we  
12    were going to rent a bus, a minibus. We were going to go  
13    with Mr. and Mrs. G to drive up for Dean to get released out  
14    of prison.

15            And, you know, we got on a bus, taking the ride up  
16    there, and we were just all really in awe. Just couldn't  
17    believe that, you know, something that you dreamed of and  
18    prayed for was actually going to happen. We were excited.  
19    Mrs. G was just ecstatic. Mr. G, his demeanor, he's -- you  
20    can't really read him. He's kind of -- he's even. You  
21    know, he's very level.

22            So we get up, and for some reason they were going to  
23    release Dean. They didn't want -- I can't remember if they  
24    didn't want people at the prison. So there was a decision  
25    they were going to take him, and we all met at a bowling

1 alley somewhere in -- close to the prison in London, Ohio.  
2 And he was at London Correctional Institute.

3 So we get to the bowling alley, and there's a lot of  
4 media there. And actually there was several people had  
5 driven up also to be there, to see Dean get released. So  
6 we're all in the bowling alley. And there was a lady named  
7 Laura Quilleman that was there. She was one of the -- she  
8 was one of the factors on getting Dean exposure and media  
9 that got him to that point. And everybody's excited.

10 And then, you know, Dean comes through the door. And  
11 to see him without a light blue-dark blue pair of pants on,  
12 wearing street clothes, it was something that we had prayed  
13 for and wished for. And he grabbed his mom. He gave her a  
14 kiss. Everybody just -- they were just so happy.

15 **Q.** That's all right.

16 I'd like to show you what's been marked as Plaintiff's  
17 Trial Exhibit Number 284 at page 6.

18 THE COURT: Has that been --

19 MR. OWENS: It hasn't. But I gave it to them  
20 previously.

21 THE COURT: Any objection?

22 MR. McLANDRICH: Just one second. I don't think so.  
23 No objection.

24 MR. HERMAN: No objection.

25 THE COURT: It may be.

1 (Exhibit displayed.)

2 BY MR. OWENS:

3 Q. Who are the people in this picture?

4 A. I think you can pretty much go to my wedding picture,  
5 but I think maybe all but one of those persons was at my  
6 wedding in that picture.

7 Q. Sir, keep your voice up.

8 A. I'm sorry.

9 Q. You can move the microphone.

10 A. That picture represents, more or less, all the guys  
11 that were in my wedding picture. That was those 10, 15 guys  
12 that we hung together and, as you can see, stayed together  
13 for -- for 20 years.

14 Q. So I want to switch gears a little bit. You said that  
15 you worked at UPS for the past, was it, 37 years?

16 A. 37.

17 Q. Outside of working at UPS, have you done other things for  
18 work or supplemental income?

19 A. Yeah. I got -- when I went full time in '91, started  
20 driving, I believe it was that year that Richie and I went  
21 in together and bought a foreclosed property. And he and I  
22 flipped that property right after I got married, I believe.

23 So I kind of got into that flipping deal. I would buy  
24 distressed properties and then, you know, fix them up and  
25 flip them.

POULTER - DIRECT (Owens)

1225

1 Q. You mentioned Richie. Is that Richie Winters?

2 A. Yes, that's Richie Winters.

3 Q. Got it. And --

4 THE COURT: Counsel, do you need that picture?

5 MR. OWENS: Oh, we can take it down. Thank you.

6 BY MR. OWENS:

7 Q. And you mentioned that you sort of got into flipping  
8 houses; is that right?

9 A. Yes.

10 Q. And just over the course of the last 20 years, have you  
11 done more than just that first one in 1999?

12 A. No. I flipped several. And I bought rentals that I  
13 kind of, you know, flipped and kept and stuff like that.

14 Q. You mentioned this is something that you and Richie did  
15 together. Before Dean got arrested, is that something that  
16 you had anticipated you would be doing with him?

17 A. No, but Dean was kind of like the pioneer, because he  
18 had actually -- he had bought a house in Dayton on  
19 Shaftesbury Drive. And he had bought that to do a flip,  
20 which he did. And some of us guys that were in that picture  
21 went down there and helped Dean work on the house. And, you  
22 know, he flipped that house.

23 And then the house that he was in on 312 Spruce in  
24 Fairborn when he was arrested, that was a flip for him also.  
25 He was in the process of flipping that house.

1 Q. Got it. So you all were just something that -- just like  
2 hanging out that you all sort of also did together?

3 A. Well, yeah. You know, I saw Dean doing it and said,  
4 heck, I'm going to jump on that, you know. And I did that.

5 And then I also, me and my wife built like six houses  
6 in a development that we lived in, GC, you know, Morris  
7 general contracted the construction of some homes sold,  
8 so --

9 Q. So. And rounding things out, you mentioned that you were  
10 the person who you think saw Dean at the prison more than a  
11 lot of your other friends, right?

12 A. Yes.

13 Q. Okay. And can you just sort of describe, briefly  
14 describe how do you think that that time in prison that you've  
15 had the opportunity to see him out for ten years, how that's  
16 impacted him and his personality in his everyday life today.

17 A. So, typically, you know, a Saturday or Sunday, they had  
18 two visitation times there to go see Dean. Always four of  
19 us would go. I was always usually the reoccurring face in  
20 the crowd. But, you know, we would go and sit with Dean in  
21 a large room full of a bunch of, you know, inmates.

22 And really, as time progressed, we would talk about  
23 what was going on on our lives with our families, what kids  
24 did -- our kids were doing, a house I might have been  
25 working on, or whatever someone else was doing in their

1 life, you know.

2 And then our conversations always reverted back to, you  
3 know, what we did prior to Dean being incarcerated because  
4 we had a lot of good times. And that for us is how we kind  
5 of, you know, related to Dean. He was -- he was -- his life  
6 had stopped, you know, and we were the sponge. You know, we  
7 brought him life in prison. He lived through what we had to  
8 say, you know. We were his ears and his eyes outside of  
9 prison and in town and in general.

10 But, you know, man, we always had great times. They  
11 had vending machines. You'd get food. But, you know, there  
12 comes a time where you have to leave, and it was hard, you  
13 know. We all would get up and give Dean a hug and tell him  
14 we love him, you know. But, you know, man, he would hug you  
15 like he was never going to see you again.

16 And once you get ready to leave, they line you up to  
17 walk all the people out. And, you know, the inmates are  
18 sitting at their table, and I'd always turn around to him,  
19 and I'd say, "Spiz, keep 'em high." You know, every time I  
20 left him. And really what that meant is for him to keep his  
21 spirits high and his hands high, you know. You just don't  
22 know what he's living through in there.

23 And every time I left, I told him that. And,  
24 typically, we would ride together, you know, an hour, hour  
25 and a half drive, to WCI or London. But on the way home,

1 we'd usually stop in Cracker Barrel or something. And we  
2 were amazed how we could sit in there for three to four  
3 hours and talk to Dean, and it was like I was sitting in his  
4 Chevy truck driving around town. He never changed who he  
5 was, the way that he interacted. It was just like I  
6 couldn't believe it. I could only fathom what he had to go  
7 through in prison.

8 But when I went and saw him, it was like I had just  
9 left him. And I just -- it just -- it just awed me. I  
10 just -- and that was through the whole 20 years that I went  
11 and visited Dean.

12 The whole -- I, you know -- he was in an environment  
13 with some probably very bad characters. The man never  
14 changed who he was. I mean, you know, I hate to stereotype,  
15 but people go into prison, they get tattoos. They change  
16 who they are. They talk differently. The man never changed  
17 who he was. He does not have one tattoo on his body. He  
18 served time in prison. He was on so many special  
19 assignments. He did so much for them. Honorable prisoner.  
20 Never got in trouble.

21 Q. Yeah.

22 A. You know, and it just amazed me how he could maintain  
23 that, you know. And that to me comes back to his character.

24 Q. Sure.

25 A. His morals.

1 Q. And I appreciate that. I just have to stop you there.

2 A. No problem.

3 MR. OWENS: Okay. No further questions.

4 MR. McLANDRICH: Just one or two, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. McLANDRICH:

7 Q. Hello, Mr. Poulter.

8 A. Hello.

9 Q. I represent Detective Moore.

10 A. Yes.

11 Q. Just one or two questions.

12 With respect to August 5th, I believe at the criminal  
13 trial you testified that you got together with Dean that  
14 evening about 5 o'clock. Does that sound about right?

15 A. On the 5th? I believe it was somewhere between 4 and  
16 6, I believe.

17 Q. All right. Well, 5 would be right in the center of 4 and  
18 6.

19 A. Yeah, yeah. 4 to 6 o'clock, somewhere in that time.

20 Q. You weren't with him earlier in the afternoon?

21 A. No, I wasn't.

22 Q. And with respect to the memory on the 20th, your memory  
23 of that was dependent on the Homer Fyffe calendar, correct?

24 A. That's what recollected me to that time frame in my  
25 life, yes.



1 Q. Thank you. That's all.

2 MR. HERMAN: No questions.

3 MR. OWENS: This witness may be excused.

4 THE COURT: Thank you very much, sir.

5 Next witness.

6 MS. PORTER: Your Honor, plaintiff would like to  
7 call Jim Osborne to the stand.

8 **JIM OSBORNE, PLAINTIFF'S WITNESS, SWORN**

9 THE COURT: Mr. Osborne, please, please try to keep  
10 your voice up for us so we can all hear your responses to any  
11 questions that may be posed. You have a microphone there.  
12 You can utilize it as you desire. You can move -- it moves.  
13 It moves forwards and backwards. But if you get too close, it  
14 may muffle you; if you get too far away, it may lose you. One  
15 way to resolve that or solve that problem is just keep your  
16 voice up so we can all hear you, all right?

17 THE WITNESS: Sure.

18 THE COURT: All right. You may inquire.

19 **DIRECT EXAMINATION**

20 BY MS. PORTER:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. Could you please state and spell your name for the  
24 record?

25 A. Jim Osborne, J-I-M O-S-B-O-R-N-E.

OSBORNE - DIRECT (Porter)

1231

1 Q. Where are you from, Mr. Osborne?

2 A. Fairborn.

3 Q. And how long have you lived there?

4 A. Since '64.

5 Q. Do you still live there?

6 A. Yes.

7 Q. And are you married, sir?

8 A. I was.

9 Q. How long were you married, sir?

10 A. 50 years.

11 Q. And do you have any children?

12 A. I got one.

13 Q. Daughter or a son?

14 A. Daughter.

15 Q. And do you currently work?

16 A. I used to. I don't now.

17 Q. You retired?

18 A. Yes.

19 Q. How long have you been retired?

20 A. Probably eight or nine years.

21 Q. All right. And before you retired, can you give us a  
22 brief recap of your employment history?

23 A. Well, going back when I first came here, I worked for  
24 National Homes. And then I worked for NCR. And then went  
25 to work for an insurance company. And I've worked for a

1 painting contractor out of Columbus. And after that,  
2 started work for myself.

3 Q. And how long did you work for yourself?

4 A. I think I started '74 maybe.

5 Q. And when you were working for yourself, what did you do?  
6 What kind of work?

7 A. Construction and painting and such as that.  
8 Remodeling.

9 Q. And would you say, were you successful in your  
10 construction business?

11 A. I'd say so.

12 Q. What was the -- what kind of properties did you work on?

13 A. Mainly residential.

14 Q. Did you own those properties?

15 A. I'm sorry?

16 Q. Did you own the properties you worked on?

17 A. Not all of them, no.

18 Q. Did you own any portion of them?

19 A. I did buy some and rent them and flip them.

20 Q. What was the -- what would you say was the most  
21 properties you owned at one time?

22 A. Probably 50.

23 Q. And was that 50 over the course of your entire career?

24 A. Yes.

25 Q. And were you in the military, sir?

OSBORNE - DIRECT (Porter)

1233

1 A. Yes, I was.

2 Q. When were you in the military?

3 A. '67 through '69.

4 Q. And how did you join the military?

5 A. I'm sorry?

6 Q. How did you join the military?

7 A. I got drafted.

8 Q. Okay. And what were you drafted for?

9 A. The Army.

10 Q. And for the Army to do what?

11 A. I'm sorry?

12 Q. You were drafted into the Army to do what, sir?

13 A. Defend the country.

14 Q. To be more precise, were you drafted for a war?

15 A. Yes.

16 Q. Which war?

17 A. Vietnam.

18 Q. And when you were in Vietnam, were you deployed over in  
19 Vietnam?

20 A. Yes.

21 Q. For how long?

22 A. I was there about nine months.

23 Q. All right. And while you were there, what did you do?

24 A. I was a scout observer and a launch helicopter.

25 Q. Okay. And while you were in Vietnam, did you ever see

1 combat?

2 A. Yes.

3 Q. How often did you see combat, sir?

4 A. Every day.

5 Q. And how did you leave the military?

6 A. How did I leave?

7 Q. Um-hmm.

8 A. When my time was up.

9 Q. When you saw combat, were you ever injured?

10 A. Yes.

11 Q. All right. And would you be able to tell us a little bit  
12 about your injury?

13 MR. McLANDRICH: Objection.

14 THE COURT: Is there a relevance to this?

15 MS. PORTER: Yes. For explaining -- for the witness  
16 to be able to describe both the end of his military career and  
17 how he exited.

18 MR. McLANDRICH: Objection.

19 MS. PORTER: Can I rephrase, Your Honor?

20 THE COURT: You may.

21 BY MS. PORTER:

22 Q. Did you receive a Purple Heart for your injury?

23 A. Yes.

24 Q. How many?

25 A. Two.

1 Q. And do you know Dean Gillispie?

2 A. I'm sorry?

3 Q. Do you know a man named Dean Gillispie?

4 THE COURT: I overruled the objection to allow that  
5 answer based on the rephrasing of the question.

6 MS. PORTER: Thank you, Your Honor.

7 BY MS. PORTER:

8 Q. And how long have you known Dean?

9 A. Probably at least 40 years, maybe 50. A long time.

10 Q. Yeah, a long time. How did you meet him?

11 A. Through his mom and dad.

12 Q. And how did you know his family?

13 A. They had insurance with the company I worked for.

14 That's when I first met them, back in the '70s.

15 Q. Got it. Were you close with his parents?

16 A. We become pretty good friends later.

17 Q. And how would you describe Dean before he went to prison,  
18 when he was a young man?

19 A. He was pretty much a normal 16-year-old, ambitious kid.

20 Q. Did he ever work for you?

21 A. Yes, he did.

22 Q. What was the first job he did for you?

23 A. It was a parking lot in Fairborn, a shopping center  
24 they just built.

25 Q. What was he doing in the parking lot?

1       A.     He was -- cleaned the parking lot and emptying trash  
2       cans and such as that in the morning before he went to  
3       school.

4       Q.     The morning before he went to school, okay.

5             And directing you back to your construction career, did  
6       Dean ever do any work for you in your construction business?

7       A.     Yes, he did.

8       Q.     What kind of work did he do?

9       A.     Build a house in 1990 and '91 maybe it was, and he  
10      worked on that.

11      Q.     Okay. And did you train him to do this work?

12      A.     Well, yeah, I'd say I did.

13      Q.     What did you train him to do?

14      A.     A little bit of everything in the construction  
15      business.

16      Q.     Okay.

17      A.     And he was eager to learn, too.

18      Q.     Okay. Can you -- how was he eager to learn? How did he  
19      show that to you?

20      A.     Well, by wanting to do more every day of -- learn more  
21      every day.

22      Q.     What was he like as a worker?

23      A.     I'm sorry?

24      Q.     What was he like as an employee?

25      A.     He'd be a good employee. He was then.

OSBORNE - DIRECT (Porter)

1237

1 Q. And how was he with other employees you had?

2 A. Friendly and nice.

3 Q. Okay. And did he ever tell you if he had any aspirations  
4 to be in the same field as you?

5 A. Yes, he did.

6 Q. What'd he tell you?

7 A. Well, he wanted to buy a house and flip it, and he did.

8 Q. Okay. Did you help him with those homes?

9 A. Some.

10 Q. Okay. And how did you help him with flipping homes?

11 A. Just kind of different things he wanted to know if he  
12 should do or shouldn't do and things like that.

13 Q. Okay. Did you try to mentor him?

14 A. I never thought about it, I guess, at the time.

15 Q. Now how would you characterize it?

16 A. Well, I probably did.

17 Q. Okay, sir. And do you know how many homes you helped him  
18 with?

19 A. I think two.

20 Q. Okay.

21 A. Best I can remember.

22 Q. What do you remember about the first home you helped him  
23 with?

24 A. It was somewhere here in Dayton, and I don't remember  
25 exactly what. Several little things, I think.



OSBORNE - DIRECT (Porter)

1238

1 Q. Do you remember what advice you gave him?

2 A. I think on some drywall and some doors, I think maybe.

3 Q. Okay. And what do you remember about the second home you  
4 helped him on?

5 A. I think that was on some plumbing. He was having some  
6 plumbing issues, I think.

7 Q. Do you remember if he finished fixing up the second home?

8 A. I don't think he finished it because he was arrested  
9 during the time.

10 Q. And moving to that, what did you think when Dean was  
11 arrested?

12 A. I kind of thought it was a hoax.

13 Q. Why did you think it was a hoax?

14 A. Well, I couldn't understand why they was arresting him.

15 Q. And did you attend his trial?

16 A. Yes, I did.

17 Q. What do you remember about the trial?

18 A. Well, that's been a while back. I thought it was all  
19 kind of a setup.

20 MR. McLANDRICH: Objection, Your Honor.

21 THE COURT: Sustained.

22 THE WITNESS: I mean, I didn't believe --

23 THE COURT: Sustained.

24 BY MS. PORTER:

25 Q. What did you think when Dean was convicted?

1 A. Well, I just couldn't believe that he was.

2 Q. Did you ever visit him when he was in prison?

3 A. Yes.

4 Q. How often did you visit him?

5 A. Not real often. I don't remember exactly.

6 Q. How -- if you -- how many times do you think you visited  
7 him over the course of his 20 years?

8 A. Probably four or five.

9 Q. Okay. And what were those visits like?

10 A. Well, it was probably exciting to him, but it was kind  
11 of shocking to me, I guess.

12 Q. Why was it shocking?

13 A. Well, it's just kind of a sad thing for me to see him  
14 there.

15 Q. And how did Dean seem on those visits?

16 A. Most of the time he was kind of upbeat, but wouldn't  
17 have been like me.

18 Q. How did you feel after you left him at the end of the  
19 each visit?

20 A. Kind of depressed.

21 Q. And why did you go visit him when he was in prison?

22 A. Well, I just thought I needed to.

23 Q. Why'd you think you needed to?

24 A. I felt like he needed a friend.

25 Q. And when you did visit him in prison, do you remember if

1       you were on the visitation form as a friend or as a family  
2       member?

3       A.     No, I don't.

4       Q.     And when did you find out that Dean was going to be  
5       released?

6       A.     Probably the day that he was released.

7       Q.     Do you remember -- do you remember how you felt?

8       A.     Excited.

9       Q.     While he was incarcerated, did you stay close with his  
10      family?

11      A.     Yes.

12      Q.     How did Dean's incarceration impact his parents?

13      A.     Very bad, I think. It would me too.

14      Q.     And when you say "very bad," what do you mean?

15      A.     Well, I don't think they could believe what had  
16      happened either, and his mother's real upset all the time.

17      Q.     And how was his father?

18      A.     I think he was maybe kind of depressed. He didn't talk  
19      much then.

20      Q.     Were you at the welcome party at Dean's house when he got  
21      home?

22      A.     Yes.

23      Q.     And what was the party like?

24      A.     Well, everybody was excited. Dean was excited.

25      Q.     How did you know Dean was excited?

1       A.     You could just tell. I mean, he was almost back to his  
2       old self again. But then, you know, he seen all of his  
3       friends that he hadn't seen for years.

4       Q.     And do you remember how many people were at the party?

5       A.     No, I don't.

6       Q.     Was it packed?

7       A.     Yeah, it was -- it was pretty packed.

8       Q.     And have you seen him much since his release?

9       A.     Yes, I have.

10      Q.     How often have you seen him since his release?

11      A.     Probably once a month.

12      Q.     And since his release, how have you seen -- have you seen  
13      any way that being in prison has changed him as a person?

14      A.     I'm sorry?

15      Q.     I can clarify. Have you seen since his release any  
16      impact the prison has had on his personality?

17      A.     Yeah, I think he's more upset and irritated now.

18      Q.     And since his release, have you given him any other  
19      advice on real estate?

20      A.     No, not really.

21               MS. PORTER: And I think that's all, Your Honor.  
22      Thank you.

23               MR. McLANDRICH: No questions, Your Honor.

24               MR. HERMAN: No questions.

25               THE COURT: Can this witness be excused?

1 MS. PORTER: Yes. Thank you, sir.

2 THE COURT: Thank you, sir.

3 MR. OWENS: I believe Mark Godsey is here.

4 THE COURT: Counsel, just for your purposes, there  
5 will be a break some time.

6 MR. OWENS: Could we take the break now, Your Honor?

7 THE COURT: We can. Ladies and gentlemen, we'll  
8 break for the morning. Please remember the Court's  
9 admonitions. We'll take about 10, 15 minutes, and then  
10 reconvene.

11 MR. OWENS: Thank you, Judge.

12 THE COURTROOM DEPUTY: All rise. This court stands  
13 in recess.

14 (Jury out at 10:34 a.m.)

15 (Recess at 10:34 a.m.)

16 (Jury in at 10:54 a.m.)

17 (In open court at 10:55 a.m.)

18 THE COURT: We're back on the record.

19 Counsel ready to proceed?

20 MR. OWENS: Yes, Your Honor.

21 MR. McLANDRICH: Yes, Your Honor.

22 MR. HERMAN: Yes, Your Honor.

23 THE COURT: Next witness.

24 MR. OWENS: Mark Godsey.

25 **MARK GODSEY, PLAINTIFF'S WITNESS, SWORN**

1 THE COURT: Mr. Godsey, please try to keep your  
2 voice up so we can all hear your responses to any inquiries.  
3 You have a microphone there that it appears you already know  
4 how to work it. You can either move it up or move it back  
5 from you.

6 THE WITNESS: Okay.

7 THE COURT: I will caution you, if you get too close  
8 to it, it will muffle you.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: If you get away from it, it won't pick  
11 you up.

12 THE WITNESS: It seems like I'm a little close.

13 THE COURT: So if your voice is strong, that should  
14 solve the problem, all right?

15 THE WITNESS: Thank you, Judge.

16 THE COURT: You may inquire.

17 **DIRECT EXAMINATION**

18 BY MR. OWENS:

19 Q. Could you please just state and spell your name for the  
20 record.

21 A. Mark Godsey, M-A-R-K G-O-D-S-E-Y.

22 Q. What's your current job title?

23 A. I'm a law professor at the University of Cincinnati  
24 College of Law, and I direct the Ohio Innocence Project.

25 Q. Where are you from?

1 A. Cincinnati.

2 Q. And where did you go to college?

3 A. I went to Northwestern in Chicago and then law school  
4 at Ohio State.

5 Q. When did you graduate law school?

6 A. '93.

7 Q. And what did you do right after law school?

8 A. Clerked for a federal judge, Tenth Circuit Court of  
9 Appeals, in Salt Lake City in Denver.

10 Q. And after you finished clerking, what was your first job  
11 in practice?

12 A. I worked two years for a big firm, first in Chicago,  
13 then New York City, called Jones Day.

14 Q. After you left Jones Day, I take it, what was your next  
15 job as a lawyer?

16 A. I was assistant United States Attorney, federal  
17 prosecutor, in Manhattan, New York City, for about six  
18 years.

19 Q. And what sorts of cases did you work on as a federal  
20 prosecutor?

21 A. I did organized crime, public corruption, so  
22 politicians who were corrupt, things of that nature. I had  
23 a full mix of cases -- child pornography cases, drug cases,  
24 you know. I think most of -- most of my cases were major  
25 fraud, political corruption, or organized crime.

1 Q. And do you know, sort of, generally the rough -- what  
2 years you were at the federal -- worked as a federal  
3 prosecutor?

4 A. It was '95 to 2001. And I know it was 2001 because I  
5 left right before the World Trade Center. I had been  
6 working in the World Trade Center actually, and I had just  
7 left.

8 Q. And as a federal prosecutor, did you become familiar with  
9 the rules that apply, the legal rules that apply to the  
10 disclosure of evidence in the course of criminal prosecutions?

11 A. Yeah, I had to make sure that things were properly  
12 disclosed on all my cases and that the police were  
13 disclosing -- that the files got turned over, sure.

14 Q. Okay. So you mentioned that you left being a federal  
15 prosecutor in big New York City shortly before 9/11. Where'd  
16 you go after that?

17 A. Well, I am from Cincinnati, and I wanted to be a law  
18 professor. And UC didn't have a spot that year but NKU  
19 Chase Law School did. So my first year after leaving there  
20 was move back to Cincinnati, and I was a professor at Chase  
21 Law School.

22 Q. And what's NKU?

23 A. NKU, Northern Kentucky University. It's right across  
24 the river.

25 Q. Got it. And how long were you -- excuse me. What did



1       you teach at NKU?

2       **A.**     Criminal law, criminal procedure, evidence, federal  
3       criminal prosecutions, a mix of classes.

4       **Q.**     And why did you want to leave law practice and become a  
5       professor?

6       **A.**     I had always wanted to be a professor but also had  
7       kids. So it was time to get back in Cincinnati. Being in  
8       New York, working in a government job was kind of expensive.  
9       It's a hard life.

10      **Q.**     Got it.

11      **A.**     So I wanted to come back to Ohio.

12      **Q.**     Did you say you only did one term at Kentucky Chase?

13      **A.**     I think I was there for two years.

14      **Q.**     And where did you go professionally after you were at  
15      NKU?

16      **A.**     The criminal law spot opened up at University of  
17      Cincinnati, which is where I wanted to end up. So I applied  
18      and got that job and moved across the river, and I have been  
19      in that job ever since.

20      **Q.**     And so, I guess, how long have you been a law professor  
21      at University of Cincinnati?

22      **A.**     Almost 20 years. So next year, 2023, will be 20 years.

23      **Q.**     And what courses do you teach at the University of  
24      Cincinnati law school?

25      **A.**     I teach Evidence, Criminal Law, Criminal Procedure 1,

1 Criminal Procedure 2, which is like police investigations.

2 I do seminars on police -- proper police investigations and  
3 techniques. Random seminars. I taught a seminar on the TV  
4 show *The Wire*. But just basic criminal law courses.

5 Q. Outside of your sort of teaching courses, do you run --  
6 do you do any like sort of actual practice as a law professor?

7 A. Yeah. So I in 2003 co-founded the Ohio Innocence  
8 Project, and I have directed it since its founding. So  
9 almost for 20 years.

10 Q. And what is the Ohio Innocence Project?

11 A. It's a law clinic. So law schools have these, they are  
12 just called law clinics, which are like little law firms.  
13 And the professor supervises students. So we have law  
14 students who work in the Innocence Project. So it's kind of  
15 like in a firm you have the partners and the associates, you  
16 know, the young attorneys and the partners who are  
17 supervising them.

18 We have 20 students at any given time, and we're  
19 looking into these cases of people in prison in Ohio who  
20 write us and say they are innocent. And then if we are able  
21 to do an investigation and determine that that's true, we  
22 file to seek their freedom.

23 Q. Does -- the Ohio Innocence Project or its clients paying  
24 clients?

25 A. No.

1 Q. So is the Ohio Innocence Project a nonprofit?

2 A. Yes.

3 Q. Does that mean you have to fundraise?

4 A. Yes, um-hmm. Unfortunately.

5 Q. And do you have a board of directors?

6 A. Yeah. We have an advisory board of people who help in  
7 fundraising. So it's a lot of people who are former CEOs of  
8 companies or general counsel of Kroger's and places like  
9 that. A lot of nonprofits or charities will have these  
10 boards.

11 Q. Okay. Is anybody in this room on your advisory board?

12 A. Yeah, Dean's on the board. He's one of two exonerees  
13 that are on the board.

14 Q. And so what does he do in that capacity?

15 A. Well, we have frequent meetings. We have meetings of  
16 the full board maybe every couple of months, and there are  
17 subcommittees on fundraising or marketing or public  
18 awareness, all sorts of different things.

19 And so Dean has a variety of responsibilities in terms  
20 of the general board work, but he's also sort of become the,  
21 I would guess, leader of the exonerees in terms of when  
22 somebody needs something, they know to trust Dean, and he's  
23 looking out for everybody. And he will call up and say this  
24 person's struggling. Can we find a donor who can help this  
25 person, you know, that kind of thing.

1           So he's helped fundraise. He's done tons and tons of  
2 public speaking. But he's also sort of become this sort of  
3 unofficial liaison between the board and the exonoree  
4 community.

5       **Q.**   And, now, you mentioned something about an exonoree  
6 community. At the Ohio Innocence Project, is -- have there --  
7 have you been successful in getting other -- getting folks out  
8 of prison?

9       **A.**   Yeah. The number's 37 now. And we won another case  
10 yesterday. The person's not released yet, but it's an  
11 ongoing process.

12       **Q.**   And so just -- can you just explain a little bit about  
13 how the intake process works at the Ohio Innocence Project?

14               MR. McLANDRICH: Objection, Your Honor.

15               THE COURT: Overruled.

16               THE WITNESS: So somebody has to -- somebody, one of  
17 the inmates, somebody who's been convicted writes to us and  
18 says they want us to look into their case. And so we have a  
19 questionnaire. I don't know. It's like 20, 25 pages that we  
20 send to them after we get a letter, asking them to fill it  
21 out, which has all the details and why they are claiming they  
22 are innocent.

23               And then some of the cases are cut right off the bat.  
24 Like, they will admit that they are guilty or something, even  
25 in the application, or they are from Pennsylvania and not in

1 Ohio.

2 But then assuming it's not cut for an obvious reason like  
3 that, it gets farmed out to a group of students who are  
4 working under the supervision of a professor who start an  
5 investigation.

6 Since we started in 2003, we've reviewed over 12,000  
7 files, and we are extremely picky. So we've only, like, gone  
8 to court, out of 12,000, and said we think this person is  
9 innocent, about 40 times.

10 BY MR. OWENS:

11 **Q.** And why is it important -- strike that.

12 MR. OWENS: Sorry, Your Honor. May I withdraw the  
13 question?

14 THE COURT: You may.

15 BY MR. OWENS:

16 **Q.** Is it important for you, as you say, to be extremely  
17 picky in terms of the clients that the Ohio Innocence Project  
18 represents?

19 **A.** Yeah. I mean, for a couple reasons. First of all, we  
20 have absolutely no interest in getting somebody who's guilty  
21 out of prison.

22 Secondly, if I get somebody who's out -- out of prison  
23 and they go commit a crime, my ability to fundraise is shot.  
24 So we're looking at the person, we're looking at the case,  
25 and we're being very selective.

1           We've had cases where I could win it, but then we end  
2 up catching the guy in a lie or something. So we drop the  
3 case. Or we find out some evidence later that contradicts  
4 what he was saying, that he's probably guilty. We drop the  
5 case even though we are at the point where if we went  
6 forward we could probably win it.

7       **Q.** Got it. Let's sort of focus back at the time that the  
8 Ohio Innocence Project was starting. I think you said that  
9 was around -- when did you begin starting that?

10       **A.** Well, I guess the official launch was May of 2003. But  
11 in December of 2002 -- so the way it works in academia is I  
12 knew all the way in the early fall of 2002 that I was  
13 leaving and starting at UC the next year. So I knew I was  
14 like a lame duck in my second year at NKU. I knew I was  
15 going to be gone.

16           And we had a fundraiser to start the Innocence Project,  
17 the Ohio Innocence Project, December of 20 -- excuse me --  
18 December of 2002. And I started getting things formed and  
19 getting it set up through that spring, but we didn't  
20 officially launch till May of 2003.

21       **Q.** Now, you are starting this sort of nonprofit. Why did  
22 you sort of go into this work? You were just a federal  
23 prosecutor. How did you sort of, I don't know, jump the  
24 aisle, for lack of a better phrase?

25       **A.** Actually, I think the work's very similar to being a

1 prosecutor. But in any event, the -- at NKU they had an  
2 Innocence Project, and I was not hired to run it. I was  
3 hired to just teach classes and write articles and do  
4 research like professors do.

5 And there was an Innocence Project there, and the  
6 professor who was running it was on sabbatical that year.  
7 So I literally show up for my first day, and the dean's  
8 like, you have got all this criminal investigation  
9 background. You are going to run this Innocence Project.

10 And as a prosecutor, I was not happy with being told  
11 that. And I didn't think innocent people were in prison,  
12 but I am, you know, untenured, I am new. Boss on your first  
13 day, you can't say no.

14 And so I had to supervise this Innocence Project, and  
15 at the first meeting there were these students talking about  
16 this guy who they visited in prison and they were convinced  
17 he was innocent. And I am sitting there, like, just  
18 thinking these bleeding-heart students, these students are  
19 so naive. And then DNA testing in that case ended up  
20 proving him innocent. So it was a huge, like, eye-opening  
21 experience where I questioned myself.

22 You know, then I went to the national conference where  
23 I met exonerees, people who had been wrongfully convicted  
24 from all over the country, and I realized that, you know, we  
25 can do better.

1 Q. So when did -- was -- sorry. When did the name Dean  
2 Gillispie come across your plate?

3 A. So I was -- hadn't even moved on to UC yet. I was  
4 still at Chase. And the newspaper article had been in  
5 December of 20 -- excuse me -- December 2002 that we were  
6 starting one. And if my memory serves me right, Dean's mom  
7 tracked me down after seeing that newspaper article and  
8 said, "I need to talk to you. Can I come down and bring a  
9 box. You know, we've been yelling and screaming and trying  
10 to get anybody to listen. Will you meet with me."

11 Q. Okay. And so did you ultimately decide to take on  
12 Mr. Gillispie's representation?

13 A. Ultimately. I mean, yeah. It was a process, but,  
14 sure.

15 Q. Can you just briefly summarize that process?

16 A. Well, I mean, you know, so things are slow or it's  
17 taking a while to build the project to get it started.  
18 We're also getting inquiries from other people through 2002,  
19 and then really the floodgates opened in early 2003 when we  
20 opened the Innocence Project.

21 But it's a matter of taking the case, seeing what's  
22 there already, going back and reading the trial transcripts,  
23 trying to get the police reports, doing your due diligence  
24 to get as much information as you can about the case. And,  
25 you know, many cases -- a lot of the cases fall off pretty



1 early in that process. There's overwhelming evidence of  
2 guilt or, you know, other things like that.

3 And it's sort of like I describe it as these files on  
4 an assembly line, and they're just moving along, and these  
5 things are swinging and knocking them off. But a very small  
6 percentage stay on there, and they never get knocked off,  
7 and after a while you are just like, man, every turn this  
8 case keeps looking like it was a problem, and his was one of  
9 those cases.

10 Q. Got it. And when you say "his was one of those cases,"  
11 were you referring to Dean Gillispie?

12 A. Yeah, um-hmm.

13 Q. And so as part of, I think what you said, your due  
14 diligence, you looked into the files that were available to  
15 you?

16 A. Yeah.

17 Q. And as it relates to this particular case and deciding to  
18 take Mr. Gillispie's representation on, did you get a copy of  
19 the trial transcripts?

20 A. Yes.

21 Q. And did you read them?

22 A. Yes.

23 Q. And were there things from your perspective that stood  
24 out to you as red flags about this investigation for why you'd  
25 take the case?

1       **A.**     It wasn't just the transcripts.  It was the transcripts  
2       and it was the police reports.  It was exhibits.  It was  
3       things like the photo spread.  I had never seen a photo  
4       spread like that --

5               MR. McLANDRICH:  Objection.

6               THE COURT:  Sustained.  It's not part of the  
7       question.

8               THE WITNESS:  Sure.  You are asking me just about  
9       the transcripts?

10       BY MR. OWENS:

11       **Q.**     Sure.

12       **A.**     From the transcripts, what stood out was the physical  
13       discrepancies.

14               THE COURT:  Counsel, what was your original  
15       question?  Your original question was what?

16               MR. OWENS:  As part of your due diligence, when you  
17       received the trial transcripts, what were things that stood  
18       out to you that led you to continue to investigate?

19               THE COURT:  Overruled.

20               You can answer.

21               THE WITNESS:  From the transcripts, it was a couple  
22       things:  The physical discrepancies between the description  
23       of -- the victims had given and Dean Gillispie, and also what  
24       really piqued my interest was a part of the transcripts where  
25       Detective Moore had told the victims that Dean had died his

1 hair and, you know, sort of not to be alarmed if he doesn't  
2 look like the guy. I had never, ever seen anything like that.

3 BY MR. OWENS:

4 Q. Were there other things from the police reports or other  
5 documents that stood out to you when you were determining  
6 whether to take the case?

7 A. Photo spread was a huge --

8 MR. McLANDRICH: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: Photo spread was very problematic. It  
11 was the worse photo spread I have seen in --

12 MR. McLANDRICH: Objection.

13 THE COURT: Sustained.

14 Wait a minute. It will be stricken. You are asking him  
15 questions.

16 Professor, you are going beyond the question.

17 THE WITNESS: I will focus on trying to just answer.

18 BY MR. OWENS:

19 Q. Okay.

20 A. So what was the question again?

21 Q. So the question is, what were red flags that you saw as  
22 when you received the police documentation in the case that  
23 made you want to continue investigating?

24 A. So the photo spread. The second thing was Detective  
25 Moore's notes, his reports. Usually, you see somebody going

1 through an investigation and not making up their mind,  
2 trying to keep an open mind.

3 MR. McLANDRICH: Objection, Your Honor.

4 THE COURT: Again, we're moving -- we're moving  
5 beyond your question.

6 THE WITNESS: So the photo spread and Detective  
7 Moore's police reports.

8 BY MR. OWENS:

9 Q. Got it.

10 THE COURT: Next question.

11 MR. OWENS: Your Honor, can I show the witness  
12 what's been marked as PX 104? This has been previously shown  
13 and extensively discussed.

14 THE COURT: You may.

15 (Exhibit displayed.)

16 BY MR. OWENS:

17 Q. And this is a 20-page document. I, of course, am not  
18 going to ask you to read the whole thing. But just a moment  
19 ago when you testified, you said that Detective Moore's notes.  
20 Are these -- is this a document that you reviewed?

21 A. Yeah.

22 Q. And is this the -- these were the notes in which you  
23 indicated there were some red flags about the nature of the --  
24 excuse me -- the nature of the investigation?

25 A. Yes.

1 Q. Okay. So after you read some, you know -- sorry.

2 THE COURT: Are you done with that?

3 MR. OWENS: I was telling -- yes, sir.

4 BY MR. OWENS:

5 Q. After you read some initial documents as it relates to  
6 the case, what do you do after -- what did you do in the  
7 investigation with respect to Mr. Gillispie as part of your  
8 Ohio -- representing him at the Ohio Innocence Project?

9 A. So there were numerous avenues. So I would call them  
10 branches. And the branches continued because what usually  
11 happens is you start down some branches and they don't bear  
12 fruit. So you catch the person writing to you in a lie or  
13 you find evidence that they are guilty, and you keep going  
14 if the red flags keep happening, and this is a case where  
15 the red flags kept happening at every turn.

16 So one branch that we spent a lot of time on in the  
17 early years -- we investigated the case for five years  
18 before filing. But the early part was very depth  
19 investigation into a man named Kevin Cobb.

20 We also did an investigation --

21 Q. Can I stop you right there?

22 A. Yeah.

23 Q. Just two things. First, you just mentioned a moment ago  
24 that you did an investigation for roughly five years before  
25 filing?

1       A.     Yes.

2       Q.     What do you mean when you say "before filing"?

3       A.     Before -- we wanted to be absolutely thorough, and  
4       we're not going to go to court unless we've built a  
5       credible, solid case that we believe in. And it took five  
6       years of crossing every "t" and dotting every "i" and  
7       looking to see how many red flags keep showing and where  
8       these avenues going.

9             And then, ultimately, it's like here's where we are.  
10       We have run it down. We have turned over every stone, and  
11       we are ready to go to court and say this man's conviction  
12       needs to be overturned. He needs to be free.

13       Q.     One of the things -- and we are not going to talk about  
14       all of the things that you investigated over that five-year  
15       period. So I am going to try to focus you a little bit.

16             Okay. One of the things that you investigated was an  
17       individual named Kevin Cobb; is that correct?

18       A.     Yes.

19       Q.     And what was the investigation with respect to Kevin  
20       Cobb?

21       A.     A lot of different things. So I don't know what I can  
22       say or not say, but one thing we did was get his rap sheet,  
23       his criminal history, and went and talked to people who he  
24       had committed crimes against.

25             MR. McLANDRICH: Objection.

1 THE COURT: Overruled.

2 BY MR. OWENS:

3 Q. So let's start out, you got his rap sheet. What's a rap  
4 sheet?

5 A. That lists somebody's criminal history.

6 Q. And the rap sheet that you were given, did that have a  
7 criminal history for Mr. Cobb?

8 A. Yes.

9 Q. Were there any things that, in your impression to  
10 determine the next steps in your investigation, that stood out  
11 worth investigating as it relates to Mr. Cobb's criminal  
12 history?

13 A. Yeah. Both that and simultaneously we had gotten his  
14 high school yearbook, and we were talking to people who had  
15 gone to high school with him.

16 Q. Let's just start -- let's just start with the rap sheet.

17 A. With the rap sheet, we got police files, and we found  
18 instances of flashing a badge and pretending to be a police  
19 officer. Sort of brazen abductions in broad daylight.  
20 Photos that looked very much like the perpetrator --

21 MR. McLANDRICH: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: Photos of Cobb that looked very much  
24 like the way that the victims had described the perpetrator in  
25 this case. And so it became a matter of a full-on

1 investigation, trying to track down every single crime victim,  
2 trying to track down people that knew Kevin Cobb in high  
3 school. And I actually even talked to Kevin Cobb myself.

4 BY MR. OWENS:

5 Q. Got it. And so let's just stick to the rap sheet. We  
6 will get to those other parts.

7 A. Okay.

8 Q. So the -- so you mentioned that there were some criminal  
9 allegations against him, and that's just the documentation you  
10 were provided, right?

11 THE COURT: Counsel approach.

12 (At sidebar.)

13 THE COURT: I let you into his rap sheet, but we're  
14 not going to -- I'm not going to listen to a bunch of like and  
15 similar situations in which he investigated.

16 MR. OWENS: Okay.

17 THE COURT: We're not going to try three or four  
18 rape cases or something like that.

19 MR. OWENS: He was going to say that there was  
20 another rape allegation. I guess it would be --

21 THE COURT: He's already said what in his rap sheet  
22 brought attention that made him pursue.

23 MR. OWENS: Sure. Okay.

24 THE COURT: So I don't know why we need to go into  
25 anymore specifics.



1           MR. OWENS: That's fine. I had just intended to  
2 follow up, and I am trying to keep him narrow to my question,  
3 which is just he is on the rap sheet. So I was going to ask  
4 him about the people he talked to next.

5           THE COURT: I mean, like I say, who he talked to,  
6 but we are not going to talk about what they said or anything  
7 like that.

8           MR. OWENS: I guess -- so this is David Owens also,  
9 for the record. I guess, you know, it's our position, you  
10 know, that that's continued the course of the investigation.  
11 Like if they said I have never met this person or, you know,  
12 or things that he was a great guy, that that impacts what he  
13 ultimately submitted to the court of common pleas. That's  
14 where this is going, is what ends up being part of the end  
15 result that you submitted to the court.

16           MR. McLANDRICH: What's relevant is that he did an  
17 investigation, that he prepared pleadings, that he submitted  
18 them to the court. The result it obtained. The habeas was  
19 granted. That state court granted a new trial based on  
20 alternate suspect. But the rest of this opinion evidence is  
21 not appropriate, or this character evidence that tries to show  
22 that in his mind Cobb acted in conformity with his prior  
23 character and conduct to commit the crime that Mr. Gillispie's  
24 alleged to have committed is improper, in my view.

25           MS. FRICK: No. I would just agree with John.

1           MR. OWENS: So I guess, Your Honor, I am not trying  
2           to offer this as general, like, opinion evidence with respect  
3           to that. However, I do think, given particularly the defense  
4           of this case, which is challenge the veracity of this  
5           investigation that led to Mr. Gillispie's conviction being  
6           overturned, that's why I think it's necessary to have a  
7           thorough accounting of it.

8           By contrast, if there was no dispute about  
9           Mr. Gillispie's innocence, if there was no dispute about the,  
10          you know, the valid -- whether or not the basis for which his  
11          conviction was overturned was valid, then I think I could see  
12          a little bit of that. But because they've challenged that  
13          directly and indirectly, then I think that we have got to put  
14          in so the jury doesn't think, for example, that his conviction  
15          was turned over on some kind of shaky basis. And I know we're  
16          not going to get into the Court's reasoning.

17          THE COURT: No, we are not going to get into the  
18          Court's reasoning. Plus --

19          MR. McLANDRICH: The only thing that I've challenged  
20          is questioned whether, in fact, Mr. Bailey created a report  
21          and, more importantly, whether Mr. Moore ever had it and  
22          destroyed it. And the habeas is the habeas. That's, you  
23          know, that's --

24          THE COURT: I think where we're at is I think I have  
25          given flexibility. I have allowed him to go through what he

1 did. I have -- I guess I would allow him to say he continued  
2 an investigation and talked to people, and based upon all of  
3 this stuff that he did, not the guts of all that, what he did,  
4 then he went ahead and filed. This was the result of it. And  
5 that's the way it is.

6 MR. OWENS: I'll try to -- so if the Court will  
7 allow me to lead a little bit so I can try to avoid some  
8 pitfalls, that's what I am doing, just -- and I'll try to be a  
9 bit more summary. Is that okay with the Court? I don't want  
10 to open up the door into an area you don't want me to go into.  
11 But, I mean --

12 THE COURT: Well, we are kind of close to that.

13 MR. OWENS: I understand. Okay.

14 THE COURT: Well, I can tell you I'll give you a  
15 little bit of flexibility, I guess, with regard to leading.

16 Counsel, you still can still object if you feel it  
17 gets --

18 MR. McLANDRICH: Yeah, if it gets out of place.

19 THE COURT: If it gets out of hand.

20 MR. OWENS: Just so you know where I am coming from.

21 MR. McLANDRICH: I understand what you are saying,  
22 and conceptually, a little bit of that is fine as long as  
23 you're not, you know, doing the testifying for him.

24 MR. OWENS: For sure I am not.

25 THE COURT: I am kind of dividing the baby here, if

1 he has --

2 MR. OWENS: Understood. Thank you, Judge.

3 (In open court.)

4 THE COURT: We're back on the record.

5 Counsel.

6 MR. OWENS: Yes, Your Honor.

7 BY MR. OWENS:

8 Q. Now, Mr. Godsey, we talked about a number of sort of  
9 documents that you reviewed related to Mr. Cobb's rap sheet  
10 and stuff like that. Did you -- you mentioned that you talked  
11 to some folks too, correct?

12 A. Yes.

13 Q. And as part of your --

14 THE COURT: I'm sorry. Did you say "yes"?

15 THE WITNESS: Yes.

16 BY MR. OWENS:

17 Q. As part of your investigation into Kevin Cobb, who did  
18 you speak to about him?

19 A. Ex-girlfriends who had been -- filed domestic  
20 violence --

21 MR. McLANDRICH: Objection.

22 THE COURT: Overruled.

23 Again, I think, Professor, the questions are -- the  
24 question is who did you speak to, not why did you speak to  
25 them or what.

1 THE WITNESS: Ex-girlfriends, people who had --

2 THE COURT: Okay. That's good.

3 BY MR. OWENS:

4 Q. Did you speak to Mr. Cobb's parents?

5 A. I did not personally.

6 Q. Did someone from your team speak with them?

7 A. I believe Fritz had spoken prior to us getting  
8 involved. I'm trying to remember. I don't know if we did  
9 or not.

10 Q. I was going to get to this in a minute. Does the name  
11 Emily Jo Cobb sound familiar?

12 A. Yeah, I think that is Kevin Cobb's mom.

13 Q. Did you speak to Mr. Cobb himself?

14 A. Yes.

15 Q. Now, as a result of the documents that you reviewed and  
16 speaking with individuals, including Mr. Cobb himself, did you  
17 move forward with making a claim to the court about Mr. Cobb  
18 as an alternative suspect?

19 A. Yes. I want to add one thing that I -- when you said  
20 who did you talk to from the rap sheet, I said ex-  
21 girlfriends. It was also just other people who had been  
22 crime victims that weren't ex-girlfriends.

23 MR. McLANDRICH: Objection.

24 BY MR. OWENS:

25 Q. So there were other --

1 THE COURT: I'll allow -- overruled. I will allow  
2 that to stand.

3 Go forward. Next question.

4 MR. OWENS: Yes, Your Honor.

5 BY MR. OWENS:

6 Q. As part of your investigation into Kevin Cobb, did you  
7 obtain pictures of him?

8 A. Yes.

9 Q. As part of your investigation into Kevin Cobb, did you  
10 obtain the original composite with the glasses from the case?

11 A. Yes.

12 Q. And as a result of your investigation, did you submit  
13 something to the court that compared those things?

14 A. Yes, I did. We created an exhibit.

15 MR. OWENS: And, Your Honor, if I can, I'd like to  
16 show PX 54 at 72, which was previously shown to the jury.

17 MR. McLANDRICH: No objection.

18 THE COURT: No objection?

19 MR. McLANDRICH: Not to this one.

20 THE COURT: No objection?

21 MS. FRICK: No, Your Honor.

22 THE COURT: It may.

23 And the reason I'm asking about that, counsel, is we have  
24 got a new witness on the stand. There could be some, I guess,  
25 some objection at this point.

1 (Exhibit displayed.)

2 BY MR. OWENS:

3 Q. All right. Mr. Godsey, who is the individual in this  
4 picture?

5 A. It's Kevin Cobb.

6 Q. And do you recall where this picture is from?

7 A. One of the police files for one of his cases.

8 Q. And we will just move along. We won't roll through a  
9 bunch of these, but did you obtain multiple pictures of Kevin  
10 Cobb?

11 A. Yeah, we tried to get the police files for all his  
12 cases.

13 Q. Did you ever get his personnel file at the correctional  
14 institution that he worked at?

15 A. I believe so. That was -- yeah.

16 Q. All right. And then so --

17 MR. OWENS: You can take that down. Thank you.

18 BY MR. OWENS:

19 Q. And so, Mr. Godsey, you mentioned that you use that, that  
20 image -- or you used an image and then created an exhibit with  
21 the composite; is that right?

22 A. Correct.

23 Q. And can you just sort of describe what that exhibit was?

24 A. We took the composite sketch and sliced it in half so  
25 it was the right side of the face, and then we took the

1 picture of Kevin Cobb from the same era and sliced it in  
2 half so it showed his left side, and put them together.

3 MR. OWENS: And just to be clear, can I show PX 247?  
4 This is the composite that's been previously shown.

5 THE COURT: I assume there is no objection?

6 MR. McLANDRICH: No objection.

7 THE COURT: All right.

8 (Exhibit displayed.)

9 BY MR. OWENS:

10 Q. Okay. So as far as I understand it, you juxtaposed this  
11 composite with an image of Kevin Cobb; is that correct?

12 A. Right.

13 Q. And was there anything else contained on the exhibit?

14 A. We put on the side that had Kevin Cobb's face different  
15 things from our investigation that matched the way that the  
16 perpetrator committed the crime or things he said. And on  
17 the side with the composite sketch, we put facts from the  
18 rapists so you could go across and see how it just matches  
19 up.

20 Q. And is that something that you ultimately submitted to  
21 the Court?

22 A. Yes.

23 MR. OWENS: Your Honor, I'd like to publish Exhibit  
24 PX 21.

25 MR. McLANDRICH: Objection.



1 THE COURT: I have no idea what it is.

2 MR. McLANDRICH: Can we approach, Your Honor?

3 THE COURT: You can.

4 (At sidebar.)

5 THE COURT: On the record.

6 MR. McLANDRICH: Yes. John McLandrich, Your Honor.  
7 I object to this exhibit. You know, the photos have obviously  
8 been manipulated to create this black-and-white of Cobb to  
9 make him look like the composite; plus, the dialog on the  
10 report or the document, rather, contains a number of things  
11 that aren't, I mean based on our previous dialog, admissible  
12 into evidence, shouldn't be shown to the jury. And,  
13 notwithstanding, he's already testified to essentially the  
14 content of it.

15 The jury can decide for itself how much Mr. Cobb looks  
16 like the composite without this demonstrative or whatever  
17 characterization you want to give it.

18 MS. FRICK: This is Dawn Frick. I don't have  
19 anything further other than I am not even sure there is a  
20 foundation for all the comments on the side because we don't  
21 know where they came from. But because the Court said we  
22 shouldn't hear everything, that all the conversations he  
23 has --

24 MR. OWENS: Your Honor, this is David Owens on  
25 behalf of Dean Gillispie. I've got three general responses.

1 The first is that I think that the witness has laid the  
2 foundation for this, and any cross-examination about the  
3 differences between the pictures is something for  
4 cross-examination.

5 The second, as I indicated in setting up the foundation  
6 with respect to this exhibit, is that this is part of what was  
7 submitted to the Court.

8 THE COURT: And the Court made a decision.

9 MR. OWENS: It did. And here's the third, the third  
10 issue that I have. I am trying to move along quickly. So --  
11 and part of the Township's objection here is that, you know,  
12 some of the things here they are saying there is not an  
13 adequate foundation with. I didn't ask, for example,  
14 Mr. Godsey about his conversation with Kevin Cobb where  
15 Mr. Godsey would testify, based upon his discussion with him,  
16 "I talked to Kevin Cobb. It's a super authoritative voice.  
17 It's very distinctive." I didn't do that because I didn't  
18 think they would let me. For example, this is here for a 404  
19 exclusively. There was an affidavit from a woman named  
20 Stephanie Walters, who under oath in that affidavit said that  
21 she was sexually assaulted by Mr. Cobb and that he had a  
22 fetish for oral sex. I was trying to move beyond that to  
23 simply say, you know -- provide this. This is what was  
24 provided to the Court. It's not being offered obviously for  
25 the truth of the matter asserted in that sentence. So I don't

1 think there is any prejudice.

2 MR. McLANDRICH: Those statements would be at a --  
3 John McLandrich. Those statements, at a minimum, would be  
4 double hearsay.

5 THE COURT: All right. I'm sustaining the  
6 objection.

7 MR. OWENS: Sure. Your Honor?

8 THE COURT: Sure.

9 MR. OWENS: What would you feel about the  
10 juxtaposition without the commentary on the side of the images  
11 that were already shown?

12 MR. McLANDRICH: Your Honor, I don't know how that  
13 was manipulated to make it look like a sliced face. And,  
14 again, I think we've got the picture of Kevin Cobb. We've got  
15 the description and the picture, the composite. The jury can  
16 form its own impression from those documents with respect to  
17 how much Kevin Cobb looks like the composite.

18 THE COURT: I think, Counsel, I've let you display  
19 his picture. I've let you display Cobb's picture.

20 MR. OWENS: Sure.

21 THE COURT: I've let you display the whatever you  
22 call that, that mock-up.

23 MR. OWENS: Sure.

24 THE COURT: I've allowed you to explain what you  
25 did. I've allowed you to explain what you presented to the

1 Court.

2 MR. OWENS: Sure.

3 THE COURT: We are not going into the specifics of  
4 all this. So I am sustaining it with regard to the whole  
5 document, including (indicating).

6 MR. OWENS: Thank you.

7 (In open court.)

8 THE COURT: Counsel.

9 MR. OWENS: Thank you, Judge.

10 BY MR. OWENS:

11 Q. Now, Mr. Godsey, you mentioned that there was an exhibit  
12 that was created that was a juxtaposition of the picture in  
13 the composite; is that right.

14 A. Correct.

15 Q. Whose idea was it to juxtapose those like that?

16 A. I believe -- well, my co-counsel was Jim Petro, and I  
17 believe it was Nancy Petro, his wife.

18 Q. Okay. So just summary fashion, you submitted this  
19 evidence about Kevin -- I apologize. You submitted this  
20 evidence about Kevin Cobb to the Court, correct?

21 A. Yes, we submitted live witnesses. We submitted -- it  
22 was like a trial.

23 Q. Okay. And the -- in the history that you've had in  
24 the working at the Ohio Innocence Project, have you submitted  
25 any other claims seeking post-conviction relief just based

1 upon the existence of an alternative suspect?

2 A. Of like a Rule 33 motion?

3 Q. Well, I don't know the numbers, and I don't want you to  
4 talk about the law so --

5 A. I don't think so.

6 Q. Okay. In your estimation and practice, are those types  
7 of motions common or rare?

8 A. Rare.

9 Q. So let's move, as I said, to -- we're not going to talk  
10 about your entire investigation, but I want to turn to another  
11 aspect of that investigation, which is the -- relates to Fritz  
12 and Bailey reports. Does that sounds familiar?

13 A. Yeah, um-hmm.

14 Q. Okay. Now, before we get too far down that road, I want  
15 to just -- if you can help us understand some of the terms  
16 that we've been using.

17 When you're doing post-conviction litigation, how do you  
18 submit evidence to the court before you have your little  
19 trial?

20 A. Well, you have to put things in sworn testimony form of  
21 an affidavit, and the Court has to look at that first to  
22 decide whether you get a hearing/trial.

23 Q. And just generally in colloquial terms, what's an  
24 affidavit?

25 A. It's like a statement of what the person's testimony

1 is, what they saw, what happened. It's not question and  
2 answer like a trial, but it's just this is what I know, and  
3 then they sign it with a notary public, swear to it.

4 Q. Got it. So I think you mentioned this. It's under oath?

5 A. Yes.

6 Q. And do attorneys prepare these or is it lay witnesses or  
7 both?

8 A. In my practice, both as a prosecutor and now, I will  
9 interview the witness, then I will try to type up, often  
10 taking notes on my computer as they are talking. And then I  
11 will give it to them and say "Go over this, change anything  
12 you want, make sure it's accurate." And sometimes they will  
13 be like, well, that's not exactly what I meant and blah,  
14 blah, blah, blah, blah. And so you perfect it together.

15 Q. So is it common for both as a prosecutor and as a defense  
16 attorney or just an attorney in the world to submit affidavits  
17 of sworn statements to the courts?

18 A. Yeah, um-hmm.

19 Q. And, now, when you submit an affidavit to the court, do  
20 you have an obligation that you believe that you have before  
21 submitting it to the Court?

22 A. Yeah. I mean, I can't submit false testimony or  
23 information that I know or believe is false.

24 MR. OWENS: So I want to, Your Honor, show what's  
25 been previously marked -- and I don't think that this has been

1 shown -- is PX 79, which is the 11-14-2007 affidavit from Gary  
2 Bailey.

3 MR. McLANDRICH: Objection.

4 MS. FRICK: Objection.

5 MR. OWENS: Yes, Your Honor. May I respond?

6 THE COURT: Yes.

7 MR. OWENS: So there is three things. The first is  
8 that I just want to have Mr. Godsey explain sort of the  
9 mechanics of what an affidavit is, how it looks, where the  
10 content comes from, things like that, which is what I sort of  
11 thought there wouldn't be an objection about. And --

12 THE COURT: It seems like to me the objection is to  
13 display the affidavit.

14 MR. OWENS: Sure. I mean, and the second thing --

15 THE COURT: That's an affidavit of another  
16 individual, right?

17 MR. OWENS: Correct, Your Honor. And I think that  
18 the only instruction, which was the second thing, is that the  
19 jury should be instructed that it's not being offered or shown  
20 for the truth of the matter asserted in the affidavit itself.

21 THE COURT: Well, I am going to sustain the  
22 objection as to any display of that. If you want to talk to  
23 this witness about how he performs or does an affidavit or  
24 what's part of an affidavit, that's fine. Well, I'll allow  
25 that.

1           MR. OWENS: Sure. I could use a different one. I  
2 don't care. Would you have any objection to the Macy  
3 affidavit?

4           MR. McLANDRICH: I think he can talk about what an  
5 affidavit is without them seeing it.

6           THE COURT: I just said that.

7           MR. McLANDRICH: I'm sorry.

8           THE COURT: I just said that.

9           MR. OWENS: All right, Judge.

10 BY MR. OWENS:

11 **Q.** So just a little bit more without any pictures. And let  
12 me sort of breeze through this quickly, which is, you have  
13 potential witnesses in the case, and then what do you do  
14 before something ultimately ends up as an affidavit? How does  
15 that process go?

16 **A.** You create an affidavit, that's, you talk to them. And  
17 usually I am sitting there taking notes on my laptop. And  
18 if you let a witness just sit there and take notes, they  
19 don't know what's relevant or not, so they will just drone  
20 on and on with all kinds of irrelevant stuff. And you are  
21 not supposed to talk to them about this is what we're  
22 finding. So this is what's relevant or what's not.

23           So you just take down the notes and then end up  
24 deleting the things that aren't relevant, or putting them in  
25 paragraphs, trying to put them in a logical order so you can



1 understand. And then you go, hey, will you review this,  
2 read it carefully, what's wrong. And they will say, well,  
3 this is not exactly what I meant. And so we'll say change  
4 that how you want it. And it's a back-and-forth process.

5 It's basically typing up notes of what they've said and  
6 trying to put it in a way that makes sense.

7 Q. Got it. And do lay witnesses you are interviewing, do  
8 they know the things necessarily that might be important for  
9 you to put in an affidavit for your legal claims?

10 A. No.

11 Q. So, for example, is it sometimes common for you to put --  
12 to exclude things that they might have told you that they  
13 think are relevant?

14 A. Right. I'm not going to waste the judge's time. So I  
15 am just going to put in the parts that are relevant to the  
16 case.

17 Q. Got it. And then sometimes are there things that people  
18 might tell you that they don't know are relevant but you think  
19 are for your legal claim?

20 A. Yes, exactly.

21 Q. So you mentioned this, and we talked about when you  
22 filed. Do you remember saying that earlier?

23 A. Yeah, um-hmm.

24 Q. And do you remember ultimately a rough time when you  
25 filed the post-conviction petition for Dean Gillispie?

1 A. February of 2008.

2 Q. Okay. Were there any affidavits support -- offered in  
3 support of that post-conviction petition?

4 A. Affidavit from Detective Fritz, from Gary Bailey, and  
5 from Dennis Lieberman.

6 Q. And --

7 A. I believe there were others, as well.

8 Q. You are right on cue.

9 Were there -- do you recall whether or not there was more  
10 than one affidavit from Steve Fritz?

11 A. Yeah. Yeah, yes, there was.

12 Q. Okay. And did the first affidavit from Steve Fritz, did  
13 that include mention that Mr. Gillispie had been excluded as a  
14 suspect?

15 A. Yeah, I believe briefly it talked about Rick Wolfe had  
16 come over and they excluded him.

17 Q. And the information in that affidavit, is that stuff that  
18 Mr. Fritz had told you?

19 A. Yes.

20 Q. And if you thought Fritz was lying, would you have  
21 included it in an affidavit you submitted to the Court?

22 A. No.

23 Q. And do you remember roughly when that affidavit was  
24 signed?

25 A. February of 2007. That's a rough guess.

1 Q. No problem. And do you remember when the second  
2 affidavit that Mr. Fritz signed was submitted, roughly?

3 A. There were three all in a row, boom, boom, boom. It  
4 was the second one from Fritz, one from Gary Bailey, and  
5 Dennis Lieberman was late in 2007. So November-December  
6 time period. So all within, you know, 15, 20 days,  
7 something like that.

8 Q. Okay. And did the second affidavit from Fritz, did it  
9 mention that Mr. Gillispie had been eliminated as a suspect?

10 A. Yes.

11 Q. Did it also discuss the fact that there were reports  
12 documenting it?

13 A. Right, exactly. That's what prompted the flurry of  
14 affidavits.

15 Q. Can you please explain to us what you meant when you just  
16 said that that "prompted the flurry of affidavits"? What was  
17 that conversation?

18 A. Who, my conversation with Fritz?

19 THE COURT: Well, wait a minute. Who was the  
20 conversation with?

21 MR. OWENS: Sure.

22 BY MR. OWENS:

23 Q. You mention that there was a conversation that you had  
24 that prompted the flurry of affidavits, the one from Bailey --

25 A. Um-hmm.

1 Q. -- one from Lieberman, and a second one from Fritz; is  
2 that right?

3 A. Right.

4 Q. Okay. And the conversation you had was with Mr. Fritz?

5 A. Also, I finally got Bailey on the phone. So a couple  
6 things happened simultaneously.

7 Q. Okay. And, now, when you say "simultaneously," were  
8 Mr. Bailey and Mr. Fritz together when you spoke with them?

9 A. No.

10 Q. Okay.

11 A. I had been trying to get ahold of Bailey for a long  
12 time.

13 Q. Got it.

14 A. He was what you call a hostile witness.

15 Q. Got it. And what was the conversation that you had with  
16 Mr. Fritz that led to this flurry of other affidavits?

17 MR. McLANDRICH: Objection.

18 MS. FRICK: Objection.

19 MR. OWENS: May I respond, Your Honor?

20 THE COURT: You may.

21 MR. OWENS: And I have the pages -- pages from the  
22 rough transcript yesterday, which is where --

23 MR. McLANDRICH: Objection.

24 THE COURT: Well, counsel, I think Detective Fritz  
25 did testify, correct? Or he testified yesterday, right?

1 MR. OWENS: Correct, Your Honor.

2 THE COURT: And we have his testimony. The witness  
3 is able to indicate that he did talk with Mr. Fritz. If he  
4 wants to indicate after reviewing or formulating or submitting  
5 whatever, the affidavits, as part of whatever filing he made,  
6 if his understanding of the difference between one affidavit  
7 and the other, he can do that.

8 MR. OWENS: Sure.

9 THE COURT: If that's where you are going. I don't  
10 know where you are going.

11 MR. OWENS: That's not where I am going, Your Honor.  
12 Let me --

13 THE COURT: We are not going to the testimony. We  
14 are not going to someone else's testimony.

15 MR. OWENS: I wasn't trying to go to Mr. Fritz's  
16 testimony. I was going to say that the defense's questioning  
17 yesterday of Mr. Fritz opened the door to this particular  
18 conversation. And I have copies if the Court probably wants  
19 to discuss it at sidebar.

20 THE COURT: All right.

21 (At sidebar.)

22 THE COURT: All right, Counsel.

23 MR. OWENS: Yes, Your Honor. This is David Owens on  
24 behalf of Dean Gillispie. So yesterday Mr. Fritz testified  
25 about this conversation that happened between Mr. Godsey and

1 himself where they came to realize that the reports in the  
2 case had not been produced. And Mr. McLandrich asked  
3 specifically about this conversation that -- both before trial  
4 and the time until 2007, some conversation with Mr. Godsey,  
5 did you all of a sudden realize that there was a report that  
6 was excluded. Gillispie and had gone on and on, and then  
7 Mr. Fritz goes on to describe that conversation, specifically  
8 being put at issue about the nature of how there was a  
9 discovery that the reports hadn't been turned over to the  
10 defense.

11 So I think it's -- the hearsay exception would be for,  
12 you know, rebutting an inference of prior fabrication, and I  
13 think the door has been opened by the defense as to this.

14 MR. McLANDRICH: Well, first off, it's my  
15 understanding that rough transcripts can't be cited to the  
16 Court. But that aside, what I asked Mr. Fritz about was what  
17 he said in his conduct. I didn't ask him for what Mr. Godsey  
18 said. When Mr. Godsey talks about Mr. Fritz's statements to  
19 him, that's clear hearsay. I don't think there is a hearsay  
20 exception that allows that to come in.

21 MR. OWENS: I could rephrase it to make it clear  
22 that I am asking him what he said of this conversation.  
23 That's fine.

24 MR. McLANDRICH: I mean, I think we all know that  
25 Mr. Fritz -- strike that. I think we all know that as a

1 result of the conversation, that's why the affidavit was  
2 prepared. He's already testified to that. I think that's the  
3 only pertinent part of it. I don't think he gets to --

4 THE COURT: I guess I am not sure what the relevance  
5 is to go beyond. Basically, what you have presented, and good  
6 job, you presented that there were two affidavits, one that  
7 brings the distinction about this, these reports never being  
8 submitted. I mean, it's already in there.

9 MR. OWENS: I think -- but so for this particular  
10 issue, Your Honor, I think it's really important that the jury  
11 have an opportunity to assess the credibility of these  
12 witnesses when they talk about the veracity of this moment.  
13 Like, you know, and I'll just tell you they have called it a  
14 "eureka" moment or "ah-ha" moment in the case, because I  
15 didn't know I didn't have these things, I didn't know you  
16 didn't have these things.

17 Because it's essentially the defense's position everybody  
18 should have had those moments decades before. And so he is  
19 going to say I investigated this case for five years and I  
20 didn't have that moment until this time. And I think it's  
21 absolutely essential that the jury not sort of be left in the  
22 dark about that crucial --

23 THE COURT: So what you are proposing is that you  
24 are going to present here --

25 MR. OWENS: So I would ask him the following: Did

1 you have a conversation with Mr. Fritz at some point in 2007  
2 in between these affidavits? What did you say to him that led  
3 to the second affidavit? And I'll just say it like that.

4 THE COURT: That's not hearsay.

5 MR. McLANDRICH: Well, yeah. So I kind of lost my  
6 train of thought.

7 MS. FRICK: Your Honor, this is Dawn Frick. I would  
8 just say to the extent John's already said it, but if he's  
9 testifying about what he said, I have no problem with it. But  
10 I don't know how you do that and get to his next point without  
11 getting into what Fritz said --

12 MR. OWENS: -- isn't the effect on the listener  
13 because he is going to say --

14 THE COURT: Okay. You are talking over each other  
15 now.

16 MR. OWENS: I apologize.

17 MR. McLANDRICH: What I was going to say before my  
18 mind went blank is that it's not appropriate for Mr. Godsey to  
19 be testifying to the credibility of Mr. Fritz. This is all  
20 about the credibility of Mr. Fritz. Mr. Fritz testified  
21 yesterday. The fact that Mr. Godsey had a conversation with  
22 him where he relayed this information to Mr. Godsey doesn't  
23 make Mr. Fritz more or less credible.

24 All we're going to have -- and, obviously, the import of  
25 this I think you kind of indicated -- was that the effort is



1 to have Mr. Godsey vouch for the credibility of Mr. Fritz, and  
2 that's inappropriate.

3 MR. OWENS: I would agree that it would be  
4 inappropriate for a witness to vouch for one another. I am  
5 talking about his own credibility as an investigator when he  
6 says to the Court I didn't know about this, that Gillispie had  
7 been eliminated, that there are reports, documents that I  
8 didn't know about that until 2007. Because you have said a  
9 number of times in this case that everybody should have  
10 realized this way before that --

11 THE COURT: Slow down.

12 MR. OWENS: So I'll just say that it's beyond clear  
13 that the manner in which this issue of the reports separately  
14 from the elimination itself has been significantly challenged  
15 at every juncture by the defense in this case, and it is  
16 Mr. Godsey's credibility that this pertains to.

17 THE COURT: Okay. You guys can go back. I'll rule.

18 (In open court.)

19 THE COURT: We're back on the record.

20 Counsel, I am sustaining the objection. However, I will  
21 allow you to rephrase your question in the manner in which you  
22 have indicated to the Court. However, I would ask you to  
23 tread slightly -- tread lightly.

24 MR. OWENS: Thank you, Your Honor.

25 May I just sort of reorient us to where we are, a couple

GODSEY - DIRECT (Owens)

1287

1 questions?

2 THE COURT: All right.

3 BY MR. OWENS:

4 Q. So before our little break, we were talking about the  
5 moment in time between the first Fritz affidavit which  
6 mentions the elimination of Gillispie as a suspect and the  
7 second Fritz affidavit that mentions not only the elimination  
8 but also written reports about that as well.

9 A. Correct.

10 Q. All right. Same page?

11 A. Yes.

12 Q. Okay. What did you say to Mr. Fritz in this conversation  
13 that ultimately culminated in the second affidavit being  
14 submitted to the Court?

15 A. He was talking about --

16 THE COURT: Well, no, no, no, no, no, no, no, no.

17 THE WITNESS: What did I say?

18 THE COURT: What did you say.

19 THE WITNESS: I was listening to him, and I said,  
20 "Why didn't you write any of this down?"

21 BY MR. OWENS:

22 Q. And did you have further conversation with him about  
23 that?

24 A. Yeah, he answered my question.

25 MR. OWENS: Your Honor, the natural question is to

1 ask him what did he say, right? And I assume that will raise  
2 an objection, but that is the next question.

3 MR. McLANDRICH: Yes, I would object to that, Your  
4 Honor.

5 THE COURT: Sustained.

6 BY MR. OWENS:

7 Q. How did Fritz -- what was Fritz's response to you  
8 accusing him of not writing reports?

9 MR. McLANDRICH: Object.

10 THE COURT: Wait a minute. Wait a minute. Wait a  
11 minute. Wait a minute. What is that, what's his response?

12 MR. OWENS: I'll rephrase.

13 THE COURT: Thank you.

14 MR. OWENS: I appreciate the assistance.

15 BY MR. OWENS:

16 Q. What was Fritz's reaction to you saying that he didn't  
17 have the reports?

18 THE COURT: Counsel, first, I want to instruct --  
19 I'm going to instruct the witness that a reaction is not a  
20 statement.

21 THE WITNESS: He had a strong emotional reaction.

22 BY MR. OWENS:

23 Q. Okay. And how would you describe that strong emotional  
24 reaction?

25 A. Strong and emotional.

1 THE COURT: There you go.

2 THE WITNESS: Right back at me -- right back at you.

3 BY MR. OWENS:

4 Q. Okay. So as a result of that strong emotional reaction  
5 and conversation, did you take additional investigative steps?

6 A. I said I've got to get a new affidavit with what you  
7 just told me.

8 Q. Okay. And is that the genesis for the second Fritz  
9 affidavit?

10 A. That, and I around the same time finally got Moore to  
11 call me back.

12 Q. Moore?

13 A. I'm sorry. Bailey.

14 Q. Got it. And so you had a conversation with Mr. Bailey,  
15 correct?

16 A. A phone conversation, yeah.

17 Q. And then did that ultimately lead to you getting an  
18 affidavit from Mr. Bailey?

19 A. Yes.

20 Q. And where did you get that affidavit from Mr. Bailey?

21 A. Kinko's.

22 Q. Why did you have a conversation with an important witness  
23 at a Kinko's?

24 A. He was -- so to explain this, I had been trying to  
25 reach him for a long time. He would not return calls,

1       having -- leaving notes on doors, to the point where I  
2       finally said, "Just give me ten minutes, please, and I might  
3       not ever have to bother you again. I just have to ask you a  
4       couple questions. So, if you don't, I am going to continue  
5       calling and leaving notes on your door, banging on your  
6       door."

7               So he finally gave me a call, and we talked for ten  
8       minutes, asked just a few questions. His answers made me  
9       realize I had to get an affidavit from him, but he's not  
10      somebody who I felt comfortable would show up or actually  
11      meet me. So I wanted it to be at a Kinko's so if he  
12      actually showed up, there is a notary there. We can sit  
13      down and do an affidavit right there. I can print it out,  
14      get it all done, because I probably have one chance to meet  
15      this guy for a couple minutes.

16      **Q.**     And did he arrive at the Kinko's?

17      **A.**     Yes, he did.

18      **Q.**     And, ultimately, did you submit an affidavit to the court  
19      from Mr. Bailey?

20      **A.**     Yes.

21      **Q.**     And did that generally -- affidavit indicate that he had  
22      written reports about Mr. Gillispie --

23      **A.**     Yes.

24      **Q.**     -- as a -- eliminating --

25               MR. McLANDRICH: Objection.

GODSEY - DIRECT (Owens)

1291

1 MR. OWENS: -- Mr. Gillispie as a suspect?

2 MR. McLANDRICH: Objection.

3 MS. FRICK: Objection.

4 THE COURT: I'm going to allow that.

5 THE WITNESS: Yes.

6 BY MR. OWENS:

7 Q. And you also mentioned around this same period of time  
8 you spoke with Mr. Lieberman?

9 A. Correct.

10 Q. And did Mr. Lieberman provide you an affidavit?

11 A. Yes.

12 Q. And did that affidavit ultimately get submitted to the  
13 court?

14 A. Yes.

15 Q. And just generally, did that affidavit indicate  
16 Mr. Lieberman had no clue that there were reports eliminating  
17 Gillispie as a suspect?

18 A. Correct.

19 Q. Now, you said that --

20 THE COURT: We're breaking for lunch, counsel.

21 Ladies and gentlemen, we're going to break for the lunch  
22 hour. Please remember the Court's admonitions. We will try  
23 to reconvene right at 1:15 so that we can move on.

24 Anything further, counsel?

25 MR. OWENS: No, thank you. We appreciate it.

1 MR. McLANDRICH: No, thank you, Your Honor.

2 MS. FRICK: No, Your Honor.

3 THE COURT: Thank you very much.

4 THE COURTROOM DEPUTY: All rise. This court stands  
5 in recess.

6 (Jury out at 11:58 a.m.)

7 (Recess at 11:58 a.m.)

8 (Jury in at 1:28 p.m.)

9 (In open court at 1:30 p.m.)

10 THE COURT: Welcome back, everyone. We're back on  
11 the record.

12 Counsel ready to proceed?

13 MR. OWENS: Yes, Your Honor.

14 THE COURT: Counsel?

15 MR. McLANDRICH: Yes, Your Honor.

16 MS. FRICK: Yes, Your Honor.

17 THE COURT: You may inquire.

18 BY MR. OWENS:

19 Q. Before the break, we were just talking about the  
20 affidavits and other evidence that you submitted to the Court  
21 on behalf of Mr. Gillispie.

22 A. Correct.

23 Q. Okay. And is there a sort of formal name for the filing  
24 that you filed in February of 20 -- or excuse me -- of 2008?

25 A. Motion for new a trial and post-conviction relief.

1 Q. Okay. What happened after you filed that motion?

2 A. Whatever you file, then the opposition gets a chance to  
3 file a response.

4 Q. Got it. And what -- did the State file a response in  
5 this case?

6 A. Yes.

7 Q. And in this case, did the State file a response in 2008  
8 that had affidavits attached?

9 A. I believe it had one.

10 Q. Okay. Who wrote the affidavit in 2008 opposing  
11 Mr. Gillispie's post-conviction petition?

12 A. Detective Moore.

13 Q. After you got the State's opposition with Detective  
14 Moore's affidavit, what did you do next?

15 A. Got new affidavits from Lieberman and Fritz.

16 Q. And why did you get additional affidavits from Lieberman  
17 and Fritz?

18 A. They had to respond to things that had been said in the  
19 State's response.

20 Q. Got it. And did you go through the same process that you  
21 went through in creating the other affidavits?

22 A. Yes.

23 Q. Now, did you ultimately have a hearing as it relates to  
24 Kevin Cobb?

25 A. Yes.



1 Q. And then did you ultimately have a hearing related to the  
2 Fritz, Bailey affidavits and all that?

3 A. Yes.

4 Q. And did Fritz testify at that hearing?

5 A. Yes.

6 Q. Did -- well, let me just ask it a better way. Who  
7 testified at that hearing?

8 A. Fritz, Bailey, and Lieberman.

9 Q. And at any point, did you feel like you suborned perjury  
10 during that hearing?

11 A. No.

12 MR. McLANDRICH: Objection.

13 MS. FRICK: Objection, Your Honor.

14 THE COURT: It will be sustained. And stricken.

15 BY MR. OWENS:

16 Q. Okay. Let's just take a step back. Did Detective Moore  
17 testify at that hearing in federal court about the Fritz-  
18 Bailey reports?

19 A. No.

20 Q. Was he present?

21 A. Yes.

22 Q. Now, without saying anything about what the Court said or  
23 what its reasoning was, what was the results of that federal  
24 hearing?

25 A. The Court threw out Dean Gillispie's convictions.

1 Q. And then what happened to Mr. Gillispie after that?

2 A. He was released from custody.

3 Q. Got it. And what kind of timeline was this?

4 A. The hearing -- the hearing was in, I believe, May of  
5 2011, and the decision came down in December of 2011. And  
6 then Dean was released right after the decision came down.

7 Q. All right. When you found out that Mr. Gillispie's  
8 conviction had been overturned, what'd you do?

9 A. I went to his parents' house.

10 Q. What did you do when you got there?

11 A. I told them Dean's coming home.

12 Q. And did you know his parents at that point?

13 A. Yeah.

14 Q. And how did you let Dean know? Strike that.

15 Did you let Dean know he was going to be released?

16 A. Yes.

17 Q. And how did that happen?

18 A. By phone. I mean, I didn't drive to the prison. And  
19 with his parents, we placed a call to the prison and  
20 eventually got him brought to the phone.

21 Q. Was there some time between when the decision came down  
22 and when Mr. Gillispie was released from prison?

23 A. It was a couple of days, I think.

24 Q. After Mr. Gillispie was released, was he totally free, no  
25 restrictions?

1 A. No. The prosecution said they wanted to appeal. So  
2 the judge had a monitor, ankle monitor for a while.

3 Q. And this was in sort of December of 2011 into 2012?

4 A. Yes.

5 Q. How long did Mr. Gillispie have to wear that ankle  
6 monitor after being released in 2012?

7 A. Until April of 2012. I think it was April 12th.

8 Q. What happened in April of 2012 relative to Mr. Gillispie?

9 A. A second court, so a different court, the state court  
10 of appeals, also overthrew -- overturned Dean Gillispie's  
11 convictions.

12 Q. And that was related to Kevin Cobb?

13 A. Correct.

14 Q. How did it impact Dean to be -- and was Dean released  
15 from the ankle monitor in 2012?

16 A. Yes.

17 Q. How did it impact him to be released? You were there?

18 A. Yeah. I mean, it's hard to even put into words. When  
19 you've been in prison for 20 years for something you didn't  
20 do and you're -- the psychology of that, you know, which I  
21 got to know well, to finally win is something that is hard  
22 to even describe.

23 Q. Now, even then in 2012, was Mr. Gillispie totally free to  
24 do whatever he wanted?

25 A. After the ankle monitor came off?

1 Q. Yes, sir.

2 A. No. They were continuing to try to appeal, and the  
3 litigation just dragged on for years. So he had this  
4 hanging over his head.

5 Q. And so at some point, and without describing the exact  
6 machinations in court, were you still litigating the dismissal  
7 of the charges?

8 A. It dragged on seven -- about seven years.

9 Q. Okay.

10 A. I mean, it just -- every possible thing to file to drag  
11 it out.

12 Q. Got it. And I want to just -- I asked a poor question.  
13 I apologize.

14 At some point in 2013, did the State submit a brief  
15 opposing the dismissal of the charges?

16 A. I'm sure they did. It was ongoing from 2011 till 2017.

17 Q. And regardless, at some --

18 A. Oh, yeah, yeah, yeah, in front -- yeah, yes.

19 Q. Do you remember, sir, what I am referring to?

20 A. Yeah, the litigation in common pleas court in  
21 Montgomery County, yeah.

22 Q. Got it. And during that litigation, did the State rely  
23 on any evidence from -- by way of affidavit in opposing the  
24 charges being dismissed?

25 A. There was a new affidavit by Detective Moore.

1       **Q.**     Do you remember anything that was said in that affidavit  
2     by Detective Moore?

3               MR. McLANDRICH:   Objection.

4               THE COURT:   Sustained.

5               MR. OWENS:   Can I have the basis, Your Honor?

6               THE COURT:   The basis is that you're talking about  
7     him testifying as to what an affidavit of someone else said.

8               MR. OWENS:   It's a party in the case, Detective  
9     Moore.

10              THE COURT:   That's not hearsay?

11              MR. OWENS:   No.   It's a party opponent.   It's not  
12     hearsay.

13              THE COURT:   Come forward.

14              (At sidebar.)

15              MR. OWENS:   Your Honor, this is David Owens on  
16     behalf of --

17              THE COURT:   Wait a minute.   I'm sorry.   Your  
18     objection.

19              MR. McLANDRICH:   I'm not sure exactly what affidavit  
20     he's referring to, but unless he's admitted in that affidavit  
21     that he's destroyed the report or that he knowingly or  
22     recklessly created a photo array that was unfair to  
23     Mr. Gillispie, I don't see how it's relevant to any of the  
24     issues in this case.

25              So, you know, they are talking about an affidavit that

1 the State of Ohio proffered apparently in the criminal  
2 litigation that the State of Ohio controlled.

3 THE COURT: Maybe I'm missing this.

4 MR. McLANDRICH: He's trying to suggest that it's  
5 some sort of admission against interest, it seems to me, and  
6 so unless it's an admission as to something that's relevant to  
7 this case -- and the only two claims in this case, as I  
8 understand it, relate to either this report that was allegedly  
9 suppressed or destroyed and the photo array. So unless the  
10 affidavit speaks to one of those two things, I'm not sure how  
11 it's relevant to anything in this case. It's still a hearsay  
12 document.

13 Mr. Moore has testified in this case. He could have been  
14 asked whatever the content of the affidavit is. Trying to get  
15 it in with this witness is inappropriate.

16 MR. OWENS: That's a lot of words. I think it's  
17 straightforward. It's a statement by a party opponent. It is  
18 not hearsay. And the content of it, presumably counsel knows,  
19 is the affidavit that was produced in discovery and that was  
20 filed in the state court. And I will say that it does address  
21 the Fritz and Bailey elimination of Gillispie as a suspect.  
22 So that's where this is going.

23 MS. FRICK: This is Dawn Frick, Your Honor. I would  
24 just say if they have got something, then why wasn't it  
25 brought up in the testimony of Mr. Moore then. It could have

1       been used either to impeach or refresh his recollection. It  
2       seems inappropriate to bring it in through this witness.

3               MR. OWENS: Your Honor, I don't think there is any  
4       rule that I am aware of that requires you to use all of your  
5       evidence about a witness with that particular witness. In  
6       fact, I think the Court's jury instructions will say something  
7       to the effect of you consider all the evidence, regardless,  
8       whoever admitted it. So that's not something I remember  
9       seeing in 801, 802, 803, or 804.

10              THE COURT: And so where are you going with this?

11              MR. OWENS: I think what he will say, if he  
12       remembers, is that there was an affidavit that was submitted  
13       at that time where Moore said that he had submitted reports by  
14       Fritz and Bailey. That's it.

15              THE COURT: Did it say supplementary reports, or  
16       just supplementary reports?

17              MR. OWENS: Supplementary reports.

18              MR. McLANDRICH: What does that have to do with  
19       anything? He's already testified he had supplementary reports  
20       from Fritz and Bailey.

21              MR. OWENS: I don't think he testified he saw any  
22       supplementary report from Fritz? What report did he  
23       supplement from Fritz?

24              THE COURT: All right.

25              (In open court.)

GODSEY - DIRECT (Owens)

1301

1 THE COURT: All right. We're back on the record.

2 Counsel, ready?

3 MR. OWENS: Yes, Judge.

4 THE COURT: Objection's overruled.

5 BY MR. OWENS:

6 Q. Do you remember the question?

7 A. Yes.

8 THE COURT: Well, why don't you restate the  
9 question.

10 MR. OWENS: Yes, Judge.

11 BY MR. OWENS:

12 Q. The question, as best I can say it again, was do you  
13 recall what Mr. Moore's affidavit from 2013 stated when it was  
14 submitted in opposition to your request to have the charges  
15 against Gillispie dismissed?

16 THE COURT: Is there some parameter with regard to  
17 the question? I mean --

18 MR. OWENS: That was how I phrased it.

19 THE COURT: With regard to certain, I mean -- do you  
20 want him to review the entire affidavit for you or what?

21 MR. OWENS: Well, it's two pages, but I can ask -- I  
22 was trying to ask the same question I asked before. I can ask  
23 a narrower one.

24 THE COURT: I would ask you to ask a narrower one.

25 MR. OWENS: Thank you, Judge.



1 BY MR. OWENS:

2 Q. Do you recall whether or not the affidavit Detective  
3 Moore submitted in 2013 said anything about whether or not he  
4 reviewed ports -- reports authored by Fritz and Bailey?

5 A. Yes, it said that he had.

6 Q. Now, eventually, what was the ultimate outcome of  
7 Mr. Gillispie's criminal case?

8 A. It was dismissed, with prejudice.

9 Q. So if I understand correctly, you've been representing --  
10 or you've known Dean Gillispie for almost 20 years?

11 A. Yes.

12 Q. Now, in that time, have -- how would you describe your  
13 relationship with Dean?

14 A. We've become very close friends.

15 Q. And as his attorney and friend, have you seen the impact  
16 that his incarceration has had on him?

17 A. Yes.

18 Q. And can you just describe that?

19 A. Well, it's just something I am always aware of. So one  
20 incident while he was -- well, when he was still in prison,  
21 so I was representing him from '03 until '11, while he was  
22 still in prison, and unlike other people in prison I  
23 represent, he could not be updated on the case. It was too  
24 painful.

25 So I would start off saying we filed this and I'm going

1 to mail it to you and then the State responded this way.  
2 And then I'd go visit him and he would say, you know, I  
3 can't even -- I couldn't even sleep after you mailed that to  
4 me.

5 And so it got to the point where I'm like, you just  
6 want me just to not talk about it? And he's like, just  
7 don't -- don't tell me about it. I came to visit him, I'd  
8 just give him very vague this is what's going on, 'cause he  
9 couldn't handle it.

10 **Q.** And so did that remain true from that point through the  
11 rest of his litigation, that you didn't give him extensive  
12 updates about his case?

13 **A.** Yeah. That he couldn't handle it. It would trigger  
14 him.

15 **Q.** Now, are there other moments, any other particular  
16 moments that you can have where you sort of saw how this  
17 incarceration impacted Dean while he was still in prison?

18 **A.** There was one time I went to visit him where I had  
19 been -- I was really tired. So I had little kids, and I had  
20 been running around all weekend at soccer, basketball, and  
21 all that kind of stuff. And then a kid was sick and kept me  
22 up all night. So in the morning, I had to go visit Dean.

23 So they bring me into the attorney visiting room, and  
24 it took them a while to go get Dean and bring him, and I  
25 fell asleep. So I didn't -- I was sitting in the chair and

1 I fell asleep sitting up.

2 And so he came in and woke me up. And I was real  
3 apologetic; I felt bad. I just said, "Man, you know, the  
4 kids are kicking my butt. You know, I've been up all night  
5 and I'm really sorry. Damn soccer games all weekend, and I  
6 am just beat. I'm really sorry."

7 And he said, "Man, I would die to have a kid keep me up  
8 sick all night. I would die to be able to take my kids  
9 around soccer games. And don't come in here and talk to me  
10 like that again."

11 And I said, "I'm sorry."

12 **Q.** And at some point, as we discussed, Mr. Gillispie was --  
13 well, we haven't talked about this with you, but do you know  
14 about the art that he's started to create?

15 **A.** Yeah, we talked about his art. We talked about music.  
16 And in 2010 we had a conference in Cincinnati, and it was at  
17 the International Freedom Center, which is a museum in  
18 Cincinnati. And we asked our clients in prison if they  
19 would, you know, share a poem or a painting or something  
20 they had done artistic to put on the walls.

21 And Dean had already given me one painting that he had  
22 done for me, but he did one specifically for that  
23 conference, as well.

24 **Q.** Can you describe that painting?

25 **A.** It was a toilet that was a prison cell toilet or truck

1 stop toilet, you know, very dirty toilet, and it had all his  
2 things important to him in his life swirling around and  
3 going down the toilet: It was children and his family who  
4 had been born, relatives who had died, people who had got  
5 married, friends who had gotten married and had children,  
6 you know, all the things that he wished he was there for.  
7 And then on the outside of the toilet were written things  
8 from the prosecution's responses, like "We need another 90-  
9 day extension," stuff he didn't even want to hear from me  
10 because it would get him too upset.

11 And at the top left corner was a painting of him that  
12 he had done of himself at the time he was arrested, and down  
13 at the bottom right it had a painting of him as he saw  
14 himself at that time, and you could see the age and how much  
15 he had changed. And he put a plate over his face and both  
16 of them that said "No one's listening."

17 The -- the one in the top left, which was him when he  
18 got arrested, had a date, and in the bottom right that date  
19 changed to an odometer, just keeping track of the time, just  
20 constantly clicking.

21 Q. Where is that painting?

22 A. It's at my office.

23 Q. One of the things we talked about was there was a period  
24 of time in which you were still trying to get --

25 MR. OWENS: Can I withdraw, Your Honor?

GODSEY - DIRECT (Owens)

1306

1 THE COURT: You may.

2 MR. OWENS: Thank you.

3 BY MR. OWENS:

4 Q. We talked a little bit about Dean being released in  
5 December of 2011.

6 A. Yeah.

7 Q. Were you there that night?

8 A. No.

9 Q. Okay.

10 A. I was out of town with family.

11 Q. And did Dean have a party celebrating that release one  
12 year later?

13 A. Yes.

14 Q. Anything significant happen that weekend relative to his  
15 case?

16 A. So the news channel was there and got footage and did a  
17 story of the celebration. And that was on like a Saturday  
18 night. And it was celebrating the one year anniversary of  
19 his freedom. There were a lot of people there.

20 And then I got a call from the opposition on Monday  
21 morning.

22 Q. And when you say "the opposition," what do you mean?

23 A. Well, at that point, the State's position was being  
24 represented by the Attorney General's Office.

25 Q. Okay.

1 A. So an attorney from the Attorney General's Office.

2 Q. And what did they inform you about Mr. Gillispie?

3 A. "We're going to arrest him if he doesn't go register as  
4 a sex offender."

5 Q. And what was your reaction to that?

6 A. "What are you talking about? He had his convictions  
7 overturned. That makes no sense."

8 Q. Did Mr. Gillispie ultimately have to end up filling out  
9 sex offender paperwork at that time?

10 A. Yeah, because -- I felt we could win, but they said,  
11 "Well, you're going to have to litigate it with him back in  
12 jail because we are going to go arrest him."

13 So I had to call Dean and say they saw this on the news  
14 and they want you to go register as a sex offender or they  
15 are going to arrest you. We are going to win because you  
16 got your convictions overturned, but you're going to have to  
17 go through this.

18 And he said, "I don't care. I will go register as a  
19 sex offender. They can't do anything to me at this point."

20 Q. Did you see whether or not that had any impact on Dean  
21 even after a year out?

22 A. It was just never-ending. It was just a part of never-  
23 ending delay, fight back. No matter what you say, we're  
24 going to come back after you. And so it was just part of  
25 the whole picture.

1       **Q.**     Okay.  Last question.  You've become good friends with  
2       Dean over the past 20 years.  Have you, from your perspective,  
3       seen how this continual situation has had an impact on him  
4       since he's been released over the past few years in terms of  
5       his mental health?

6       **A.**     Yeah, he's an inspirational person because despite what  
7       happened to him, he's the first guy that lights up the room  
8       and, you know, tells everybody to keep smiling and don't let  
9       things get you down.  But it's just a never-ending beating  
10      drum.

11           And, you know, I had to reach out and try to get some  
12      counseling.  It's not uncommon for people in his position.  
13      But you know, in the meantime, other things would happen in  
14      other cases where exonerees would have an easier time, the  
15      prosecutor would agree, you know, let them out and all these  
16      sort of things, and he's just seeing how he's being treated  
17      differently, and that would, like, trigger him.  So you'd  
18      see him go into these periods of like depression or anger  
19      that he's trying to control.

20           And so all of us who love Dean, you know, we're always  
21      kind of talking about how we could help him, how we could  
22      support him, what's upsetting him right now, and how we  
23      could be there for him.

24      **Q.**     Did he --

25           MR. OWENS:  That's all.  No further questions at

1 this time.

2 THE COURT: Thank you.

3 Counsel.

4 MR. McLANDRICH: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. McLANDRICH:

7 Q. Good afternoon, Mr. Godsey.

8 A. Hello.

9 Q. I represent Detective Moore in this matter.

10 The actions that you were just talking about in terms of  
11 making register as a sex offender, those were actions of the  
12 State of Ohio?

13 A. Yes.

14 Q. Not Detective Moore?

15 A. I would argue that people were taking certain positions  
16 because of the key players involved.

17 Q. So you think Detective Moore was controlling the Attorney  
18 General's Office of the State of Ohio; is that what you're  
19 suggesting?

20 A. I wouldn't say "controlling." I would say when one of  
21 these cases develops, the response of the person who was  
22 involved sometimes dictates and sets the tone for how the  
23 State responds.

24 Q. And so what you're suggesting is that Detective Moore  
25 continued to believe that Mr. Gillispie was guilty?



1       A.     I'm sorry. Say the question again.

2       Q.     Yes. What you're suggesting is that Detective Moore  
3 continued to believe that Mr. Gillispie was guilty?

4       A.     I don't know what he believed.

5       Q.     Oh, all right. With respect to the Fritz and Bailey  
6 reports, you don't have any personal knowledge that those  
7 reports existed, do you, other than what --

8       A.     No. I was not there.

9       Q.     And with respect to any allegation that if the reports  
10 existed, that they were destroyed or suppressed by Detective  
11 Moore, don't have any personal knowledge of that either,  
12 correct?

13      A.     No, I wouldn't have been there.

14      Q.     And those allegations that the reports existed depend  
15 upon the credibility of Mr. Fritz and Mr. Bailey, correct?

16      A.     Yes, but there's corroboration for it.

17      Q.     Certainly no corroboration in the sense of a report ever  
18 being produced, correct?

19      A.     I would say in a strange way, Moore's second affidavit  
20 corroborates. And I'll explain why. He said, "I read the  
21 reports of Fritz and Bailey."

22             But there were no reports of Fritz and Bailey. So what  
23 in the world did you read.

24      Q.     There were certain reports from Detective Bailey in the  
25 file, correct?

1 A. Not of Fritz, though.

2 Q. And Mr. Fritz had signed off on those reports, correct?

3 A. Right, um-hmm.

4 Q. Okay. And so you don't know whether Detective Moore,  
5 when he said that, was referring to reports written by Fritz  
6 and approved by Bailey?

7 A. I don't understand the question.

8 Q. Then you don't have to answer it.

9 Now, in one of the -- one or more of the affidavits that  
10 you prepared for Mr. Lieberman, it recited the belief that  
11 Detective Bailey had perjured himself during the first  
12 criminal trial, correct?

13 A. I don't remember. I mean, I didn't -- I typed up what  
14 they were telling me.

15 THE COURT: Now, Counsel, I have limited referring  
16 to deposition or affidavits and things such as that. If you  
17 want to ask general questions with regard to it, but let's not  
18 go to the affidavits.

19 MR. McLANDRICH: I understand.

20 BY MR. McLANDRICH:

21 Q. Do you remember at the habeas hearing where you, in fact,  
22 asked Mr. Bailey about the fact that he was asked at the first  
23 criminal trial whether Mr. Gillispie had ever been identified  
24 as a suspect during his investigation, and the fact that he  
25 had said no during the criminal trial. Do you recall asking

1 him about that?

2 A. Yeah, um-hmm.

3 Q. And do you recall that his response was something to the  
4 effect of: Well, I was being like Bill Clinton when he was  
5 asked about Monica Lewinski and he said, "I didn't have sex  
6 with that woman." Do you recall that testimony?

7 A. Yeah, um-hmm.

8 Q. And, in fact, the purpose of that testimony was to  
9 demonstrate his admission, although he was trying to sort of  
10 weasel on it, if you will, as the president had with respect  
11 to Monica Lewinski, that I really didn't lie. I was, you  
12 know, playing word games.

13 A. Right.

14 Q. Now, if, in fact, these reports excluding Mr. Gillispie  
15 existed, this would have been something that Mr. Fritz and  
16 Mr. Bailey knew about during the entire duration of the  
17 investigation of Mr. Gillispie and the entire duration of his  
18 criminal prosecution, correct?

19 A. Right. Although I think they left the department.  
20 But, yes. Once they created them, they would know about  
21 them.

22 Q. Certainly. And you're aware, are you not, that Mr. Fritz  
23 was the criminal investigator for Mr. Lieberman once he left  
24 the department?

25 A. Yes, um-hmm.

1       **Q.**     And that would be -- as demonstrated by being the focus  
2       of your habeas petition, that would be pertinent information  
3       that Mr. Fritz should have conveyed or would convey to his  
4       criminal defense lawyer he's working for, correct?

5               MR. OWENS:   Objection.

6               THE COURT:   Hold on.

7               MR. OWENS:   It lacks foundation about what somebody  
8       else would do.

9               THE COURT:   Overruled.   You can answer it if you  
10       can.

11              THE WITNESS:   No.

12       BY MR. McLANDRICH:

13       **Q.**     Okay.

14       **A.**     And you would -- never occur to you that this had not  
15       been turned over.   So it would be weird to say, by the way,  
16       these exist.

17       **Q.**     Now, Kevin Cobb, that was something that was known to the  
18       criminal defense even before the first trial, correct?

19       **A.**     I think his name perhaps, but not the details that we  
20       uncovered.

21       **Q.**     And, in fact, Kevin Cobb was brought to the attention of  
22       the defense by Mr. Gillispie himself, correct?   Brought to  
23       Mr. Fritz's attention, who then brought it to the attention of  
24       Mr. Lieberman by Mr. Gillispie himself?

25       **A.**     May have been something like:   Somebody told me this

1       guy looks like the composite sketch, this guy named Kevin  
2       Cobb, or something like that, yeah.

3       **Q.**     But it came from Mr. Gillispie?

4       **A.**     I can't be for certain. I think I've seen something  
5       like that somewhere.

6       **Q.**     Now, when you're pursuing a potential habeas petition or  
7       investigating a potential habeas petition, the idea of missing  
8       exculpatory evidence is not an uncommon avenue to pursue,  
9       obviously if it's available to you, correct?

10      **A.**     You need to define "missing." Normally, in a case like  
11      this, police reports are not turned over, but they -- later  
12      you get them in a public records request. Missing in terms  
13      of they just vanished is not usual.

14      **Q.**     I understand. But the idea that there was a report that  
15      existed that was not produced, was not produced or was not  
16      produced because it was destroyed, is something that is  
17      pursued with some frequency in seeking a habeas petition?

18               MR. OWENS: Objection; it's compound.

19               THE COURT: Counsel, do you -- I mean, sir, do you  
20      understand that question?

21               THE WITNESS: Yeah. It's hard to answer.

22               THE COURT: Okay. Hold on. Rephrase.

23               MR. McLANDRICH: Sure.

24      BY MR. McLANDRICH:

25      **Q.**     So there's various grounds on which a court might grant a

1       habeas petition, correct?

2       **A.**     Correct.

3       **Q.**     And one of those grounds would be if the police had  
4       reports and didn't produce them to the prosecution, correct?

5       **A.**     Or to the defense, correct.

6       **Q.**     Yes.   Exactly.   To the defense.

7               And sometimes that can be because the report simply  
8       exists and wasn't actually produced, correct?

9       **A.**     Still exists and wasn't produced, right.

10       **Q.**    Or sometimes there can be an allegation, as there is in  
11       this case, that the report exists and wasn't produced and yet  
12       we never have the report to be able to know for sure whether  
13       that report existed or not?

14       **A.**    I would -- I would answer it this way: I guess it's  
15       possible that in some cases there's evidence of a report and  
16       the report vanished in some way that we can't identify.

17       **Q.**    And sometimes that evidence that the report might have  
18       existed and vanished is just someone's testimony?

19       **A.**     Correct.

20       **Q.**    And for the person who's alleged to have had that report  
21       and suppressed or destroyed it, very hard to prove the  
22       negative of that, isn't it?

23       **A.**     Sure, yeah.

24       **Q.**    Because, again, now it's just going to be one person's  
25       testimony against the others, correct?

1       A.     Right.

2       Q.     That's all I have for you, sir.  Thank you.  Appreciate  
3       your time.

4               MS. FRICK:  Just briefly, Your Honor.

5                               **CROSS-EXAMINATION**

6       BY MS. FRICK:

7       Q.     Mr. Godsey, my name is Dawn Frick.  I represent the Miami  
8       Township Board of Trustees.  I just have a couple of quick  
9       questions.

10            You -- I think you testified that you were one of the  
11       attorneys that filed a petition for post-conviction relief and  
12       a motion for new trial?

13       A.     Yes.

14       Q.     And in that you were making representations based upon  
15       your investigation, correct?

16       A.     Yes.

17       Q.     And isn't it true that specifically in that petition you  
18       had argued that the failure to preserve or disclose materially  
19       exculpatory evidence was done so in bad faith?

20               MR. OWENS:  Object.

21               THE COURT:  That's what he argued.

22               THE WITNESS:  I don't think so.  I'd have to refresh  
23       my memory.

24               MS. FRICK:  Do you have a copy of that post petition  
25       up there that she can refresh his memory.  The ones you just

1 sent to us?

2 MR. OWENS: We sent it to the Court.

3 THE COURT: Is there an exhibit?

4 MS. FRICK: It's PX 286.

5 MR. OWENS: Do you have a page number?

6 MS. FRICK: 52.

7 MR. OWENS: Thank you.

8 THE COURT: This is a refreshing recollection,  
9 correct?

10 MS. FRICK: Yes, Your Honor.

11 THE COURTROOM DEPUTY: It goes up to 285.

12 MR. OWENS: I have it pulled up here, if I could  
13 give it to your deputy, Your Honor.

14 THE COURT: Okay. Now, for the purposes of the  
15 record, is this an exhibit?

16 MR. OWENS: It is, Your Honor. I know it was on the  
17 USB that we provided to the Court over the weekend, but it  
18 sounds like the paper copy might not have been updated.

19 MS. FRICK: I think in the paper copy it's actually  
20 page 49.

21 THE COURT: And so, basically, the question is a  
22 specific question. So once you're done reviewing the document  
23 that you are reviewing, just please raise your head and we  
24 will -- they will restate that specific question.

25 THE WITNESS: You are asking me to read page 49?



1 BY MR. McLANDRICH:

2 Q. Yes. I think if you look in Section 2 of page 49.

3 A. Okay.

4 Q. And my question was, Mr. Godsey, isn't it true that you  
5 argued on behalf of Mr. Gillispie that the failure to preserve  
6 or disclose materially exculpatory evidence was done so in bad  
7 faith?

8 MR. McLANDRICH: Objection. The sentence at issue  
9 isn't an argument, it's simply a quotation of the case as --

10 THE COURT: Sustained. If you want to ask him your  
11 question that you asked him previously, you can ask him.

12 THE WITNESS: I'm just citing case law.

13 THE COURT: Hold on.

14 What was your previous question?

15 MS. FRICK: I thought that was it, Your Honor.

16 BY MR. McLANDRICH:

17 Q. Wasn't the basis of one of the arguments in that post-  
18 petition -- post-conviction relief and motion for new trial  
19 that you filed on behalf of Mr. Gillispie that the failure to  
20 preserve or disclose materially exculpatory evidence was done  
21 so in bad faith?

22 A. No. I'm talking about the legal standards there in  
23 *Arizona versus Youngblood*.

24 THE COURT: All right. The answer is "No."

25 BY MS. FRICK:

1 Q. Mr. Godsey, just one last question. Isn't it true that  
2 you were married to Michelle Barry?

3 A. Yes.

4 Q. And she is one of the trial attorneys on the record for  
5 this case, isn't she?

6 A. Yes, um-hmm.

7 MS. FRICK: Thank you. Nothing further, Your Honor.

8 THE COURT: Anything, counsel?

9 MR. OWENS: Very briefly.

10 THE COURT: With regard to those matters that have  
11 been covered on cross.

12 MR. OWENS: Yes, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MR. OWENS:

15 Q. Mr. Godsey, the post-conviction petition that you were  
16 just being questioned about, the one you filed on behalf of  
17 Mr. Gillispie, were you the only attorney who signed that  
18 document?

19 A. I believe Jim Petro did as well. Yeah.

20 Q. You were asked about Detective Moore's 2013 affidavit and  
21 the statement in that affidavit that he had read reports by  
22 Fritz and Bailey. Do you recall that?

23 A. Say that one more time, please.

24 Q. You were asked by counsel for Officer Moore about his  
25 2013 affidavit in which he stated that he read reports that

1 were authored by Fritz and Bailey.

2 A. Yes.

3 Q. Do you recall that?

4 MR. OWENS: Your Honor, could we show the witness  
5 what's been previously admitted, I think in a number of  
6 iterations, Plaintiff's Trial Exhibit 282?

7 THE COURT: It has been shown before?

8 MR. OWENS: Yes, a number of times.

9 THE COURT: Hold on a second.

10 MR. McLANDRICH: No objection.

11 MR. HERMAN: No objection.

12 THE COURT: All right.

13 (Exhibit displayed.)

14 BY MR. OWENS:

15 Q. All right, sir. And I'll direct your attention to  
16 Exhibit 282 at the bottom, the very bottom. The whole bottom.

17 Do you recall being asked on cross-examination about  
18 reading supplemental reports that were written by Detective  
19 Bailey?

20 A. About me reading?

21 Q. Yes.

22 A. Yeah, yes.

23 Q. And does -- this Exhibit 282 here, do you see  
24 Mr. Bailey's signature?

25 A. Yeah, um-hmm.

GODSEY - REDIRECT (Owens)

1321

1 Q. Is there any signature by Fritz on this document?

2 A. No.

3 Q. Is there any signature by any supervisor on this  
4 document?

5 A. No.

6 MR. OWENS: Can we pull up Plaintiff's Trial Exhibit  
7 Number 281. Shown repeatedly.

8 THE COURT: All right. Any objection?

9 MR. McLANDRICH: No, sir.

10 BY MR. OWENS:

11 Q. This is a report --

12 MR. HERMAN: No objection.

13 THE COURT: I'm sorry. I thought you did say that.

14 BY MR. OWENS:

15 Q. This too is a report authored by Detective Bailey,  
16 correct?

17 A. Yes.

18 Q. And did Fritz sign this report?

19 A. No.

20 Q. Is there any supervisor who signed off on this report?

21 A. No.

22 MR. OWENS: No further questions.

23 THE COURT: Does that raise anything anyone?

24 MR. McLANDRICH: Yes, Your Honor.

25 THE COURT: With regard to those two or three

1 questions.

2 MR. McLANDRICH: Yes. Understood, Your Honor. Give  
3 me one moment if I could.

4 If we could, I'd like to show the witness Plaintiff's  
5 249, please. It's a Miami Valley Crime Lab report which I  
6 believe has been previously shown.

7 MR. OWENS: No objection.

8 MS. FRICK: No objection.

9 THE COURT: It may be. Thank you.

10 **RECROSS-EXAMINATION**

11 BY MR. McLANDRICH:

12 Q. Sir, showing you Plaintiff's Exhibit 249, who does it  
13 indicate is the investigating officer on this Miami Valley  
14 Regional Crime Laboratory report?

15 A. Fritz.

16 MR. McLANDRICH: Could I have Exhibit 252, please.

17 MR. OWENS: Objection. This is beyond the scope.

18 THE COURT: Well, okay. Counsel, respond.

19 MR. McLANDRICH: I don't see how it's beyond the  
20 scope when his point was Detective Fritz is not on any of the  
21 investigating reports, and these are investigating reports  
22 from the file.

23 MR. OWENS: It wasn't that they are not on the  
24 investigative reports generally, it's about supplemental  
25 reports from Miami Township. That's from Miami Valley.

1 THE COURT: The issue was whether or not there were  
2 reports in the file from both Fritz and Bailey. I didn't hear  
3 that to be specifically -- you can follow up if this brings  
4 questions. I am going to overrule the objection. He can  
5 testify.

6 MR. McLANDRICH: Would you bring up Exhibit 252,  
7 Plaintiff's 252. This is also a Miami Valley Regional Crime  
8 Lab report. I believe that's been previously displayed.

9 MS. FRICK: No objection here.

10 MR. OWENS: No objection.

11 THE COURT: Okay.

12 (Exhibit displayed.)

13 BY MR. McLANDRICH:

14 Q. This is also a document from the Miami Valley Crime Lab,  
15 and who's it directed to?

16 A. To Fritz.

17 Q. Now, isn't it true that after the initial report, every  
18 report in a file is a supplemental report to the original?

19 A. I'm not sure how they use that terminology.

20 Q. All right. That's all. Thank you.

21 THE COURT: All right. Now, counsel -- I'm sorry.

22 MS. FRICK: No, Your Honor.

23 THE COURT: Counsel?

24 MR. OWENS: Very briefly.

25 THE COURT: With regard to those two questions.

GODSEY - FURTHER REDIRECT (Owens)

1324

1 MR. OWENS: Yes, sir.

2 **FURTHER REDIRECT EXAMINATION**

3 BY MR. OWENS:

4 Q. Mr. Godsey, were either of the exhibits that you were  
5 just shown supplemental reports prepared by Miami Township  
6 Police Department?

7 A. No.

8 Q. And did Detective Moore's affidavit that we've been  
9 discussing indicate that he had reviewed reports that were  
10 authored by Fritz and Bailey?

11 A. Yes, that's my memory.

12 MR. OWENS: No further questions.

13 THE COURT: Anything, Counsel?

14 MR. McLANDRICH: Just one second, Your Honor. All  
15 of a sudden, the computer doesn't want to respond.

16 No, thank you, Your Honor.

17 THE COURT: All right. Can this witness be excused?

18 MR. OWENS: Yes, sir.

19 THE COURT: Mr. Godsey, thank you very much.

20 Next witness.

21 MR. OWENS: We've got Juana Gillispie.

22 I apologize, Your Honor. Thank you.

23 We will call Sergeant Tim Wilson via deposition.

24 THE COURT: All right. But -- no, no, no, not her.

25 MR. OWENS: I apologize.

1 THE COURT: Ladies and gentlemen, we are going to  
2 recess for about five minutes, five minutes, and we'll be back  
3 in here.

4 I will see counsel in chambers on the record.

5 THE COURTROOM DEPUTY: All rise. This court stands  
6 in recess.

7 (Jury out at 2:17 p.m.)

8 (In chambers at 2:26 p.m., with the exclusion of David  
9 Owens.)

10 THE COURT: Counsel we're on the record outside the  
11 presence the jury for the purposes of hearing objections to a  
12 deposition, video deposition or a written deposition of Tim L.  
13 Wilson.

14 Counsel has provided the Court a copy of the designated  
15 testimony to be presented. There are two objections with  
16 regard to that testimony, and the Court will at this point in  
17 time entertain any argument that wishes to be made with regard  
18 to those objections.

19 We will first deal with -- well, let me first ask,  
20 counsel, enter their appearance, since we're on the record.

21 MR. KANOVITZ: Mike Kavovitz, Megan Porter for  
22 plaintiff.

23 MR. McLANDRICH: John McLandrich and David Sipusic  
24 for Defendant Moore.

25 MS. FRICK: Dawn Frick and Chris Herman on behalf of



1 Miami Township Board of Trustees.

2 THE COURT: The first objection that has been raised  
3 is at page 41, line 17, through page 43, line 2. The Court at  
4 this time would entertain the objection and any response  
5 thereto. Counsel.

6 MR. SIPUSIC: Your Honor, we want to object to this  
7 portion of the testimony from Officer Wilson in that it seems  
8 to wander across the line from lay witness testimony into the  
9 expert realm when he talks in generalities about the type of  
10 officers and photographic lineups, procedures, policies for a  
11 period of years. We don't see a reference in this highlighted  
12 text to Miami Township. It seems, again, broad, and he's  
13 talking about general police officers, and, again, it crosses  
14 the line into the expert realm.

15 THE COURT: All right.

16 MR. KANOVITZ: I think it's clearly he is talking  
17 about how it worked in Miami. He was the direct supervisor at  
18 issue here when Detective Moore did the lineups. And he was  
19 not -- he was not opining as to general police practices at  
20 all. He was saying here's how it was inside of Miami Township  
21 Police Department. And how it was inside of Miami Township  
22 Police Department is directly relevant on the good faith/bad  
23 faith issue because it is evidence of what Moore would have  
24 known.

25 THE COURT: Anything? Final word?

1 MR. SIPUSIC: No. Again, the highlighted text we  
2 are not seeing references to Miami Township as we sit here.

3 THE COURT: Counsel, anything?

4 MS. FRICK: No, Your Honor.

5 THE COURT: All right. After considering the  
6 arguments, considering the testimony provided in the  
7 designations, the Court's going to sustain the objection from  
8 page 41, 17, through 42, 19. The Court will overrule the  
9 objection as to 42, line 20, through 43, line 2.

10 So the testimony or the deposition testimony from 17  
11 through -- 41, 17, through 42, 19, will not be read. And the  
12 testimony from 41, 20, to 43, 2, may be read.

13 There is an objection at page 60, lines 6 through 9.  
14 Counsel?

15 MR. SIPUSIC: Your Honor, in this excerpt, we're  
16 objecting based on relevance, foundation. It's talking about  
17 Scott Moore had leeway as a young detective because his father  
18 was the chief. We don't see the import and the relevance of a  
19 comment regarding leeway, and it implies that there is a  
20 foundation of leeway because it's talking and asking about  
21 more leeway for Scott. And we don't see relevance or the  
22 foundation that's provided for this question or comment.

23 THE COURT: Counsel?

24 MR. KANOVITZ: Well, foundationwise, the man was the  
25 supervisor; so he certainly had the opportunity to know that.

1 And, secondly, there's been evidence here about the issue of  
2 tunnel vision and the need to have multiple officers working  
3 on the same case. And saying they had leeway meant that he  
4 had the, you know, the room given to him to pursue this case  
5 as he solely decided.

6 THE COURT: All right. Anything?

7 MR. SIPUSIC: We don't know what he's implying by  
8 "leeway," the subject matter. And, again, is it shining his  
9 shoes, you know, coming in late? Just examples of that.

10 THE COURT: Anything?

11 MS. FRICK: No, Your Honor.

12 THE COURT: Overruled. 6 through 9 on page 60 may  
13 be read.

14 How are we doing this?

15 MR. KANOVITZ: I'll be Mr. Wilson and Megan will be  
16 the questioner. And she'll read the question; I'll read the  
17 answer, if that's appropriate.

18 THE COURT: Surely.

19 (Off the record.)

20 THE COURT: Back on the record.

21 The Court has -- there's been a request to allow the  
22 reading of an interrogatory into the record by the plaintiff.  
23 Counsel.

24 MR. KANOVITZ: Yes.

25 THE COURT: The basis for that.

1 MR. KANOVITZ: So the basis is, it is an admission  
2 by a party. It is evidence. That's why you ask  
3 interrogatories, or at least why interrogatories have to be  
4 answered under oath. And so we would like to offer this as  
5 some evidence on the issue of the officer's mental state.

6 THE COURT: Mental state?

7 MR. KANOVITZ: Yeah. If he violated policies and  
8 that's -- you know, one inference can be drawn is that he  
9 should have known better. If he didn't violate policies, it's  
10 very hard to draw an inference that he should have known  
11 better.

12 MR. HERMAN: Your Honor, this was just proposed  
13 today, this morning, as the Court is well aware. And it  
14 involves interrogatory responses that were served on October  
15 the 12th, 2018. And there was qualifying language within  
16 that.

17 Since the Township -- and this is when the Township was a  
18 party, not Miami Township Board of Trustees. Since the  
19 interrogatories were served, there were 18 depositions that  
20 took place after that fact. Scott Moore served his discovery  
21 responses after those interrogatories were served on behalf of  
22 Miami Township.

23 Expert discovery went on --

24 MR. KANOVITZ: May I --

25 THE COURT: No, no. He is arguing against it.

1 MR. KANOVITZ: I know. I'm hearing it, and I'd like  
2 to withdraw the motion to read it. He's making sense to me.  
3 It would become complicated to explain all of that.

4 THE COURT: You win.

5 (Concluded at 2:43 p.m.)

6 (Jury in at 2:49 p.m.)

7 (In open court at 2:50 p.m.)

8 THE COURT: We're back on the record.

9 Ladies and gentlemen, I wasn't very good in that estimate  
10 for you on time. But I've had a pretty good track record so  
11 far up till that.

12 All right. Counsel, we ready to proceed?

13 MR. KANOVITZ: Just one moment.

14 THE COURT: All right.

15 (Pause.)

16 THE COURT: Counsel, while you're preparing, I'm  
17 going to read an instruction to the jury.

18 Ladies and gentlemen, the next witness will be by way of  
19 deposition designation. Basically, a deposition is a  
20 witness's sworn testimony that is taken before trial. During  
21 a deposition, that witness is under oath and answers -- under  
22 oath and swears to tell the truth. And, of course, the  
23 lawyers for the parties may ask questions.

24 A court reporter is present at the deposition and records  
25 the questions and the answers. The deposition designations of

1 Mr. Tim L. Wilson, was taken on December the 18th, 2018, will  
2 be read to you at this time. Those parts or the designations  
3 of the deposition will be presented to you by the reading of  
4 those deposition's designations on the record.

5 Now, this deposition testimony that is read is entitled  
6 to the same consideration as live testimony, and you must  
7 judge it in the same way as if the witness was testifying in  
8 court. Please don't place any significance or -- on the tone  
9 of voice or the behavior of any of the persons reading the  
10 questions or the answers.

11 Counsel ready to proceed?

12 MR. KANOVITZ: Almost, Your Honor. We have a small  
13 quality control issues, Judge.

14 THE COURT: All right.

15 (Pause.)

16 MR. OWENS: I take back my take-back. Our next  
17 witness will be Juana Gillispie.

18 THE COURT: All right.

19 **JUANA GILLISPIE, PLAINTIFF'S WITNESS, SWORN**

20 THE COURT: Ms. Gillispie, I need you to try to keep  
21 your voice up so that we can all hear any responses that you  
22 make with regard to any of the questions that are posed to  
23 you.

24 You have a microphone there, and you can move it closer  
25 to you or you can move closer to it, however you desire. If

1 it gets too close, it might muffle you; but if it gets too far  
2 away, it won't pick you up. I don't know how strong your  
3 voice is, but if you can keep your voice up as much as you  
4 can, that helps solve the problem, all right?

5 THE WITNESS: Yes, sir.

6 **DIRECT EXAMINATION**

7 BY MR. OWENS:

8 Q. Hi, Juana. Right here.

9 A. Oh, hi.

10 Q. Hi. Can you hear me?

11 A. Yes.

12 Q. All right. So you've got to scootch just a little closer  
13 or you can move the mike.

14 A. Okay.

15 Q. So it should be able to pick you up. You can scoot it a  
16 little closer.

17 A. Closer?

18 Q. There you go. Perfect.

19 A. Okay.

20 Q. Can you just state and spell your name?

21 A. Juana Gillispie, J-U-A-N-A G-I-L-L-I-S-P-I-E.

22 Q. And where do you live?

23 A. 1512 Glendale Drive, Fairborn, Ohio.

24 Q. How long have you lived in Fairborn?

25 A. Oh, Fairborn, probably 53 years.

JUANA GILLISPIE - DIRECT (Owens)

1333

1 Q. All right.

2 A. Yeah, but not in the same house. We lived in two  
3 houses.

4 Q. Got it. And do you know who this guy is to my left over  
5 here?

6 A. That's my son.

7 Q. Is he your only son?

8 A. No. I have Dean and James, two sons.

9 Q. Do you have any daughters?

10 A. Two daughters, Jodi and Zandra.

11 Q. Who's Roger Gillispie?

12 A. My husband.

13 Q. Is he here today?

14 A. Yeah, I see him over there.

15 Q. All right. And were you originally from Ohio, or did you  
16 grow up somewhere else?

17 A. I grew up in Eastern Kentucky.

18 Q. Got it.

19 A. Yeah.

20 Q. What brought you to Ohio?

21 A. When I was in Eastern Kentucky, I went to a one-room  
22 schoolhouse.

23 Q. Uh-huh.

24 A. From the first to the fifth grade.

25 What brought me to Ohio? My mother moved us to Ohio so



JUANA GILLISPIE - DIRECT (Owens)

1334

1 that we could get a better education.

2 Q. When did you meet your husband, Roger?

3 A. In high school.

4 Q. Where was that?

5 A. Mead Memorial High School.

6 Q. And how long have you all been married?

7 A. Oh, my. It's about 58, 59 years.

8 Q. And what sorts of things did you do for employment when  
9 you did work?

10 A. I was a hair dresser.

11 Q. Outside of hair dressing, did you have any sort of  
12 hobbies or things that occupied your life when Dean was  
13 growing up?

14 A. Well, when my -- when my kids started school, I  
15 volunteered at the school.

16 Q. Do you do anything with the church?

17 A. Yes. Yes, I -- I was a Sunday school teacher.

18 Q. How long did you teach Sunday school?

19 A. I taught Sunday school in our small church for years.  
20 And then we went to another church, and I taught there for  
21 years, but I can't remember how many years.

22 Q. Now, was Dean a big church guy?

23 A. Yeah, um-hmm.

24 Q. And did he also do things outside of church?

25 A. Well, he loved to fish. He loved to be with his

1 friends. He was in the Awanas. We had a club in church  
2 that was called Awanas, and they were in sports and  
3 different things.

4 Q. Okay. Now, I want to fast forward a little bit. After  
5 Dean graduated high school, did he stay in the house for a  
6 little while?

7 A. He did, but he was -- he was working on a house.

8 Q. Got it. And what do you mean by -- when you say --

9 A. He and my -- a friend of ours, he was teaching Dean how  
10 to fix up old homes and sell 'em.

11 Q. Who is that friend?

12 A. Jim Osborne.

13 Q. Do you remember how old Dean was when he started working  
14 on homes?

15 A. I think it's after he graduated, but I'm not sure.

16 Q. Got it. Did Dean at some point start working at General  
17 Motors?

18 A. Yes.

19 Q. And anybody else in your family work there at the time?

20 A. My husband.

21 Q. How would you describe your relationship with Dean when  
22 he was in high school and thereafter about, you know, when he  
23 was working at General Motors?

24 A. Dean loved to work. He loved it. I mean, he went to  
25 Jim Osborne and said "I want a job" when he was a kid.

1           And he said, "Okay, how about going and cleaning this  
2 parking lot."

3           So he went. And he was -- he cleaned the parking lot.

4           I remember his -- Jim gave him his first check. And he  
5 went to the bank and tried to cash it, and they said you got  
6 to show us identification. He handed them his library card.  
7 So then they're saying he can't, you know, do this and that.  
8 So I had to go up there and take care of that. But he  
9 worked. But Dean loved to work.

10       Q.    Yeah.

11       A.    And when he worked at General Motors, he was also going  
12 to carpentry school.

13       Q.    Got it. And what was your relationship like with Dean  
14 when he was a young adult, before he got arrested?

15       A.    He was wonderful. He just loved being with his  
16 friends. We loved having his friends at our house. We  
17 tried to make sure we knew where they was at. I never had  
18 any problem at all.

19       Q.    Now, were you the --

20       A.    He --

21       Q.    Sorry.

22       A.    That's okay.

23       Q.    Were you the kind of parent that had -- how would you  
24 describe your relationship with Dean? Did you talk to him or  
25 see him regularly?

1 A. Oh, yeah, every day. Every day. Yeah.

2 Q. Now, do you remember what Dean's hair looked like when he  
3 was in high school?

4 A. Yeah.

5 Q. What was that?

6 A. It was -- it was brown, but he had started getting  
7 gray. And he had gray in the sides, and a few in the back.  
8 But I did the same thing at 16; I started getting gray.

9 Q. Got it. And so that was my next question. Were you  
10 surprised that Dean started going gray a little early?

11 A. No.

12 Q. Anybody else in your family that happened to?

13 A. Yeah. All my children. My youngest daughter was born  
14 with a gray streak in her hair. And then my oldest  
15 daughter, she started graying early. They're all gray now.

16 Q. It's been a long time.

17 And is there anything that was noticeable about Dean's  
18 face back when he was in high school or as a young adult?

19 A. Dean always had a clear complexion. He has a cleft in  
20 his chin, like his father. And he's fair-skinned.

21 Q. Sure.

22 A. Like I am.

23 Q. Now, when he was growing up, did he have bad acne or  
24 anything like that on the sides of his cheeks?

25 A. He never did have that. I never did either. Never had

JUANA GILLISPIE - DIRECT (Owens)

1338

1 that.

2 Q. Was Dean a smoker?

3 A. No.

4 Q. I am just going to move forward a little bit here. Do  
5 you remember the summer of 1990 and the lead-up before your  
6 son got arrested?

7 A. Um-hmm.

8 Q. I am going to draw your attention to that time, okay?

9 A. Um-hmm.

10 Q. Did you ever have any interactions with this guy over  
11 here, Detective Scott Moore, that summer?

12 A. Yeah, he called me on the phone. Yes. And also he was  
13 at the house when they came and got Dean.

14 Q. Got it. Let's separate those things out.

15 A. Um-hmm.

16 Q. What was the conversation that you had with Detective  
17 Moore on the phone?

18 A. He wanted to know where Dean was at, and I told him I  
19 didn't know at the time. And he wanted to know where his  
20 grandfather lived, and I said he lives in Columbus. And I  
21 think he even asked if he had a gun, and I said I think Dean  
22 got -- or I know Dean got a beebee gun for Christmas.

23 Q. Anything else you can recall about that conversation with  
24 Detective Moore back in 1990?

25 A. No, I can't.

1 Q. Okay. At any point during that conversation did  
2 Detective Moore tell you he was trying to prove your son's  
3 innocence?

4 A. Oh, no.

5 Q. So I believe that you said your next interaction with  
6 Detective Moore was the day that Dean got arrested?

7 A. They came to his house.

8 Q. Tell me what you remember about that.

9 A. I was out back, and I had just hung two lines of  
10 clothes up on the clothesline. My daughter Zandra was in  
11 the house. My neighbor, Joyce Blair, came over with a tall  
12 glass of ice tea. Dean's friends came to the back gate and  
13 told me the police were at his house and they would not let  
14 them in. They wouldn't let them in. And so my daughter  
15 took me over there to the house.

16 And I got to the house, and the police were there, and  
17 they -- they said I could not come in, that he was all  
18 right. And I said I want to see him with my own eyes. And  
19 so I said I'm coming in.

20 So I went in, and there was other police downstairs, I  
21 think, and police upstairs. Moore was upstairs with someone  
22 else. I don't know if his name was Deperio [phonetic] or  
23 something. And Moore is pulling out a box from under Dean's  
24 bed that had notes in it, it had bills in it, and that's all  
25 he had.

1           And he was looking for some of Dean's clothes. So he  
2 took a pair of wool gray pants because this man who did  
3 this --

4   **Q.**    I got to stop you. Just talk about the things that --

5   **A.**    So what he said was --

6           MR. McLANDRICH: Objection.

7 BY MR. OWENS:

8   **Q.**    Let's just take it one step at a time, all right?

9   **A.**    Okay. So --

10   **Q.**    Juana, can I stop you for a second?

11           THE COURT: Hold on, hold on.

12           Why don't we start again --

13           MR. OWENS: Yes, sir.

14           THE COURT: -- and ask your question again.

15           MR. OWENS: Thank you, Judge.

16 BY MR. OWENS:

17   **Q.**    Just one step at a time, all right?

18   **A.**    Uh-huh.

19   **Q.**    Were you surprised when Dean was being arrested?

20   **A.**    Yes. I couldn't even believe it.

21   **Q.**    Okay.

22   **A.**    He was downstairs. Well, I -- that's when I went  
23 upstairs and Moore was there.

24   **Q.**    Okay. Now, did you have any interactions with Detective  
25 Moore while --

JUANA GILLISPIE - DIRECT (Owens)

1341

1 A. Um-hmm.

2 Q. -- he --

3 A. Um-hmm.

4 Q. Just one second.

5 Did you have any interactions with Detective Moore while  
6 he was searching the house?

7 A. He was just in that one area --

8 Q. Okay.

9 A. -- pulling those out, and another policeman was there.  
10 And they said, "You seem close with your son. You better  
11 tell him to admit -- you better tell him to admit to this  
12 crime or he will never see --"

13 MR. McLANDRICH: Objection.

14 THE WITNESS: "-- daylight again."

15 THE COURT: Sustained.

16 BY MR. OWENS:

17 Q. So let's just talk about the things that you remember,  
18 okay?

19 A. Um-hmm.

20 Q. So --

21 THE COURT: First, counsel, ladies and gentlemen,  
22 with regard to any statements that were made by other folks,  
23 those are stricken from your consideration.

24 Next question.

25 MR. OWENS: Sure.



1 BY MR. OWENS:

2 Q. The day that Dean got arrested, did you already have an  
3 attorney set up for him?

4 A. No.

5 Q. And did you help him get an attorney after that?

6 A. Yeah, our neighbor gave us a name of a attorney.

7 Q. And who is that attorney?

8 A. Dennis Lieberman.

9 Q. Now, did you know Mr. Lieberman personally before that at  
10 all?

11 A. No.

12 Q. Just relying on your neighbor?

13 A. Yeah.

14 Q. Sort of fast-forwarding through the process here, did you  
15 go to the court dates when Dean was being prosecuted?

16 A. I remember going downtown when I think it may have been  
17 the grand jury back there, and Lieberman said, well, I will  
18 meet you downtown.

19 Q. Got it.

20 A. And so he met us downtown.

21 Q. Okay. So that -- so soon after Dean got arrested, you  
22 went downtown?

23 A. Um-hmm.

24 Q. Okay. And do you remember whether or not y'all had  
25 enough money originally to post his bail?

JUANA GILLISPIE - DIRECT (Owens)

1343

1 A. We never had any -- no, we didn't have enough.

2 Lieberman told us that we could get a -- check into -- what  
3 is it -- our house, see how much we could borrow.

4 Q. Got it. And just since you brought it up, over the  
5 course of the last 30 years, did you have to borrow against  
6 your house to help pay for lawyers for Dean?

7 A. 32 years. Yes, yes, we've borrowed against our house.

8 Q. More than once?

9 A. More than once. We still owe. We owe everybody.

10 Q. And going back to 1990, Dean had a number of court  
11 dates --

12 A. Um-hmm.

13 Q. -- throughout the next year; is that right?

14 A. Um-hmm.

15 Q. Did you attend court?

16 A. I attend everything.

17 Q. All right. And did you see how Dean was impacted by  
18 going through these court proceedings?

19 A. Yes. It was very, very difficult. He was exhausted.

20 Q. And just going to February of 1991, do you remember when  
21 Dean was convicted?

22 A. Yeah.

23 Q. And how did that impact you?

24 MR. McLANDRICH: Objection.

25 MR. OWENS: I'll withdraw.

JUANA GILLISPIE - DIRECT (Owens)

1344

1 BY MR. OWENS:

2 Q. Did you see -- what was your reaction when Dean was  
3 convicted in February of 1991?

4 A. He stood up. They asked him to stand. And I stood up,  
5 and I just stepped two steps forward. Three policemen took  
6 me and slammed me against the concrete wall, and they threw  
7 me to the floor and sit on me. And, of course, you know, my  
8 husband tried to get me outside, and I just cried.

9 The library came out and said can we calm it down a  
10 little.

11 Q. Sure. There was another trial --

12 A. Yes.

13 Q. -- right? And Dean was convicted again; is that right?

14 A. Um-hmm.

15 Q. All right. So did you see how Dean responded when he was  
16 convicted a second time?

17 A. He cried. He said he didn't do it. And I knew he  
18 didn't.

19 Q. During the court proceedings -- and you said you were  
20 there -- did you make eye contact with Dean from time to time?

21 A. He was setting in front of us. I don't think we could  
22 make any eye contact at all.

23 Q. Got it. Did you visit him at the jail?

24 A. All the time we could go. When we could go.

25 Q. All right. So what was it like -- how did he seem when

1 you saw him in the jail here in Montgomery County?

2 A. He was exhausted. I think he might have been there for  
3 six months. He was exhausted. He said they were not giving  
4 him much food. He was so distraught because he said, "Mom,  
5 what's happening to the young people? These guys, these  
6 young people are on drugs. They don't even want to eat.  
7 They just -- mashed potatoes and gravy is all they will  
8 eat." And he said, "I'm hungry."

9 And it hurt him so bad that he did a piece of art about  
10 that: *What is Happening to America's Youth*.

11 And so I called down there, and I said, "Let me speak  
12 to somebody." And I said, "Why can't you just fix beans and  
13 cornbread? If these guys who want to eat can eat, I mean,  
14 surely your budget is --"

15 MR. McLANDRICH: Objection.

16 BY MR. OWENS:

17 Q. Got it.

18 THE COURT: Counsel.

19 MR. OWENS: I don't want to intrude, but is it okay  
20 if I interrupt when I feel it's appropriate, Your Honor?

21 THE COURT: You may.

22 MR. OWENS: All right. I don't want to step on  
23 anybody's toes.

24 BY MR. OWENS:

25 Q. So after Mr. -- sorry. After Dean was convicted, what

1 sorts of steps did you take, if any, as a mom relative to his  
2 criminal prosecution?

3 A. That was so long ago --

4 Q. Sure.

5 A. -- that they had microscopically looked at the hair,  
6 okay. But when he was convicted, I was reading about DNA,  
7 and my lawyers called me one night and said what is this --

8 Q. So you can't -- you can't talk about things that people  
9 told you, okay?

10 A. Okay. They just asked me a question, what it was.

11 Q. I understand.

12 A. So I was reading about that, and I wanted to have a  
13 mitochondrial DNA done.

14 Q. And did you have to hire attorneys to help you with that?

15 A. Oh, we had attorneys. I can't even name them all off.

16 Q. And did you -- do you know whether or not that was  
17 pursued in the courts?

18 A. Yeah, they sent it -- sent it out, the hair. That was  
19 supposed to be the hair that they had. None of it matched  
20 Dean. But there was two unknown hairs.

21 Q. Sure. So just focus on my -- so was there DNA testing  
22 that was ultimately done that was -- that Dean was able to use  
23 in his defense?

24 A. No.

25 Q. Okay.

JUANA GILLISPIE - DIRECT (Owens)

1347

1 A. Can I tell you about that hair?

2 Q. No, you can't.

3 All right. After a while, you had gone through that  
4 process where the DNA didn't pan out. Did you -- at some time  
5 did you continue to seek to get your son out of prison without  
6 using attorneys?

7 A. We -- we had attorneys. And when they filed a brief, I  
8 would go down and make sure they did file it.

9 Q. Sure.

10 A. The books back then were that big (indicating).

11 Q. They were --

12 A. So they had to go over -- the runners went over and  
13 wrote it down.

14 Q. Sure. So what I want to just focus your attention is  
15 after you sort of ran out of DNA options, did you do other  
16 things outside of the courts?

17 A. Yeah.

18 Q. What was that?

19 A. I got a call from a lady that was in the visiting room  
20 at the prison, and she said, "We are going to --"

21 MR. McLANDRICH: Objection.

22 THE COURT: Counsel, we are --

23 MR. OWENS: I understand. I can --

24 THE COURT: Ma'am, I think he is asking you what did  
25 you do. In any case, it's not proper to say what someone else

1 told you.

2 THE WITNESS: Okay.

3 THE COURT: But you can say, in response to your  
4 counsel's question, what you did.

5 THE WITNESS: Um-hmm.

6 THE COURT: All right?

7 THE WITNESS: I pursued the Innocence Project when I  
8 found out they was going in existence.

9 BY MR. OWENS:

10 Q. Okay. Perfect. How did you find out about the Innocence  
11 Project going into existence?

12 A. The lady in the room told me. She said, "We're --"

13 Q. Okay.

14 A. "-- starting a fundraiser."

15 Q. Did you ultimately meet an individual named Mark Godsey?

16 A. Yes.

17 Q. All right. And was that at the Ohio Innocence Project?

18 A. Yes. He told me to bring the transcripts.

19 Q. And was the Ohio Innocence Project fully set up at the  
20 time that you first met Mr. Godsey?

21 A. I think they were.

22 Q. Did you talk to any reporters or media outlets about  
23 doing research about Dean?

24 A. I know that we had a reporter, Laura Bischoff, came on  
25 the case.

JUANA GILLISPIE - DIRECT (Owens)

1349

1 Q. Did you ever talk to anybody from the I-Team in  
2 Cleveland -- or excuse me -- in Cincinnati?

3 A. Oh, yeah, yeah, I called them. Jeff Keane.

4 Q. Can you remember all the people that you called trying to  
5 listen to you talk to you about your son?

6 A. I called the media around here, but they said they was  
7 going to look into it, but they didn't. So a friend of Dean  
8 wrote a letter to Cincinnati, and he said he would -- Jeff  
9 Keane was an investigator.

10 Q. Got it.

11 A. So he investigated this case. For months. And then  
12 they reported it, and then they went in the prison to get  
13 Dean -- talk to Dean.

14 Q. Got it. Over the course of between, you know, when Dean  
15 went into prison --

16 A. Um-hmm.

17 Q. -- did you have the opportunity to visit him there?

18 A. Yes.

19 Q. And how often would you go visit your son?

20 A. As often as that prison would let us. Twice a month at  
21 that time.

22 Q. Got it. And did Dean ever -- you mentioned earlier that  
23 he did some painting; is that right?

24 A. Um-hmm, um-hmm.

25 Q. What kind of paintings did Dean do while he was in



1 prison?

2 A. He started out doing diorama art. These, you can  
3 take -- you take like the -- he built me a home. And I love  
4 yellow; so he made it all yellow. And he built me this  
5 house.

6 And so I went in, and they had Kool-Aid. And the  
7 warden came in. But the warden -- I was supposed to take  
8 that house home, but the warden confiscated my house and  
9 took it to his office. I never saw it again. So he made  
10 all kinds of diorama arts, and then he started painting.

11 And then, so I would go in, and I'd bring the paintings  
12 out when they allowed me to bring the paintings out.

13 Dean was -- they voted him the president of the art  
14 club.

15 Q. Got it. And so I wanted to talk a little bit about that.  
16 Did you ever see any things that Dean might have built for the  
17 Cincinnati horticulture club?

18 A. Oh, yeah. They called me and told me to come down.  
19 Tim Young, he went into the prison and talked to Dean, and  
20 so he was building the thing. And he called me and told  
21 me --

22 Q. I got to stop you. You can't talk about what people have  
23 told you, okay?

24 A. Oh, he told me to come down there.

25 Q. There we go.

JUANA GILLISPIE - DIRECT (Owens)

1351

1 MR. OWENS: Your Honor, can we just show what's PX  
2 284 at page number 2?

3 THE COURT: Objection?

4 MR. McLANDRICH: No, sir.

5 MR. HERMAN: No objection.

6 THE COURT: You may.

7 (Exhibit displayed.)

8 BY MR. OWENS:

9 Q. I am just going to have you look at the screen here.

10 A. Yes, um-hmm. That was just one of them.

11 Q. Do you see the screen right there, right below you?

12 A. Yeah. That was just one of them.

13 Q. Okay. What is this?

14 A. This is -- I think it's -- it may be the hobbit house.

15 Q. Could it be a different house?

16 A. Or a pub. They brought in a man to do this fashion.  
17 They flew him in.

18 Q. Got it.

19 MR. OWENS: Can we go to the next page, please.

20 (Exhibit displayed.)

21 MR. OWENS: And the next page. Or actually, I think  
22 it's page number 1. I apologize.

23 (Exhibit displayed.)

24 MR. OWENS: Take it down.

25 BY MR. OWENS:

JUANA GILLISPIE - DIRECT (Owens)

1352

1 Q. Did you just describe something called the hobbit house?

2 A. Yeah, he did a hobbit house.

3 Q. Just make sure you are in the microphone. Thank you.

4 A. Yeah, he did the hobbit house, the Pinsner house, which  
5 was -- the queen built those for their retired helpers.

6 Q. So how -- he built those while he was in the prison?

7 A. Yeah, um-hmm. And he had to break them down so they'd  
8 break down and fit in a big truck.

9 Q. Okay.

10 MR. OWENS: Your Honor, we'd show Plaintiff's  
11 Exhibit 284 at page 8. I apologize for the numbering.

12 THE COURT: I assume there is no objection?

13 MR. McLANDRICH: No.

14 MR. OWENS: It's the hobbit house.

15 MR. McLANDRICH: No.

16 THE COURT: Do you got any?

17 MR. McLANDRICH: No, sir.

18 (Exhibit displayed.)

19 BY MR. OWENS:

20 Q. Now, Ms. Gillispie, do you see the picture on your screen  
21 there right again?

22 A. Um-hmm.

23 Q. All right. What's that a picture of?

24 A. I think that was the hobbit house garden house or  
25 something.

1 Q. Got it. And is this something Dean built in prison?

2 A. Yeah.

3 Q. All right. And how do you think that building the  
4 structures that we've just seen -- you can take that down --  
5 in Exhibit Number 284 here are reflective of who your son was  
6 as a person in the world?

7 A. That's who he was. That's just his character. He  
8 wanted a job. He would call me and say, "Mom, I wish they'd  
9 give me a job in here." But he was doing these things too.

10 Q. Now, he talked about some -- you talked about some  
11 paintings. Do you recall any of the titles of his paintings  
12 that stand out to you?

13 A. Yes, I have one hanging in my house now. And it says,  
14 *Look, Mom, what could have been.* And it's about this big  
15 (indicated). And it is a house and a little child looking  
16 up in the child's eyes -- or the horse's eyes. And he said  
17 he didn't know if he would have had a boy and girl, but my  
18 son didn't get to have children.

19 Q. Any other pictures you have that Dean's painted at your  
20 home?

21 A. Yeah, I got lots of them. What isn't traveling, what  
22 isn't traveling around being in museums or shows or  
23 whatever.

24 Q. Got it.

25 A. I have a few left.

1 Q. Has Dean done any other art that stands out to you that's  
2 about his experience in being wrongfully convicted?

3 A. I can't remember.

4 Q. All right.

5 A. There's so many of them.

6 Q. So let's just fast forward. At some point in December of  
7 2011 Dean was released from prison, right?

8 A. Uh-huh.

9 Q. Can you just describe what happened that night?

10 A. Well, I got a call from the marshal, and she said, "Can  
11 you pick your son up in two hours?"

12 I said, "I don't have any transportation. My  
13 daughter's there visiting him now."

14 And so I called Richie, and Richie said that he would  
15 get a van, and we could just get on the van -- or anybody  
16 that wanted to go could get on the van.

17 And so we thought that Petro was going to speak outside  
18 at the door of the prison because he believed in my son, but  
19 Petro called me back and said, "Juana, they won't let you on  
20 the grounds."

21 Q. Just tell me about the things that you experienced.

22 A. When he come to the house or what?

23 Q. Well, did you see him before he got home? Where did you  
24 first see your son after --

25 A. Oh, they said we had to go to the bowling alley.

1 Q. Got it. And could you just describe the first moment  
2 that you got to see your son not in a prison in 20 years?

3 A. Yes. It was a while before he came in, but -- so we  
4 just hugged each other, and we danced and cried. And there  
5 was a lot of people there, and they cried. And it was, you  
6 know, just overwhelming, exhausting overwhelming.

7 Q. And how would you describe sort of Dean's general  
8 attitude or mood before he went into prison?

9 A. Dean, he always was in a good mood. He always was.  
10 Nothing ever really got him down. He just was in a good  
11 mood. He loved being with his friends. He loved fishing.  
12 He loved going camping, you know. One of his friend's mom  
13 and dad, they worked in the church, and they would go with  
14 them, and she would cook.

15 Q. Sure. Since he's been released, have you seen Dean  
16 exhibit -- you know, go from happiness to sadness in a shorter  
17 period of time or have a shorter fuse or anything like that?

18 A. I didn't know anything about PTSD. And my husband  
19 was -- Dean was speaking with Mark Godsey, and my husband  
20 was ironing his shirts getting them ready. He's always  
21 ready to go. And so we went in to hang those shirts on the  
22 rack, and the rack broke.

23 So we got a new rack, and we put it in there. And my  
24 husband said, well, I am going to run the sweeper, and he  
25 ran the sweeper. But when Dean came home, he didn't even

1 like that we had been in his room. You know, because he  
2 knew where everything -- because they did that at prison all  
3 the time.

4 Q. Okay. Let's back up a little bit. So after Dean was  
5 released, was he living with you?

6 A. Yes.

7 Q. And while he was out, you fixed something in his room?

8 A. Yeah.

9 Q. Okay.

10 A. He didn't speak to me three days, for three days, he  
11 was so angry with me.

12 Q. Just about some small thing?

13 A. Yeah, he went into -- he went into yelling and  
14 screaming, and his face turned red. I didn't understand it  
15 at all.

16 Q. And had you ever seen him do anything like that before he  
17 had been in prison?

18 A. No.

19 Q. The things -- you had some time with Dean since he's been  
20 out.

21 A. Um-hmm.

22 Q. And did you -- has he interacted -- I'm sorry. Let me  
23 withdraw that.

24 While Dean was in prison, did he miss out on any family  
25 events that were particularly significant?

1       **A.**     Yes, he missed out on everything. My first grandchild  
2       was only two, I think, when Dean went to prison. Dean spent  
3       a lot of time with him. My second granddaughter was born,  
4       and he was in prison at that time. And so he missed out on  
5       all that.

6             And I -- I had a son go into the war at the same time  
7       my son was going to prison. He was going to war, and he's  
8       going to prison. That was hard. I only have two sons. And  
9       I was giving them up for what? What? You know, for what?  
10      This fighting for justice, but I didn't see no justice.  
11      He's going to war to fight for justice so that blood  
12      wouldn't come here and be in our front yard.

13      **Q.**     Got it.

14      **A.**     And I had no justice for him.

15      **Q.**     That's all right.

16      **A.**     I might as well been fighting the organized crime  
17      because at least I knew who they were.

18             THE COURT: Counsel, counsel.

19             MR. McLANDRICH: Objection.

20             THE COURT: Counsel, counsel.

21             MR. OWENS: Sure.

22      BY MR. OWENS:

23      **Q.**     Why don't we just take a minute.

24      **A.**     So my son is sent to a different country --

25      **Q.**     So just take a pause, okay. And just see -- just take a



1 minute. Just take a minute.

2 All right. You okay?

3 A. (Nodded head.)

4 Q. Okay. So we will just go nice and slow and just answer  
5 my questions, okay?

6 Over time, before Dean went to prison, did he tell you  
7 what he wanted to do sort of when he grew up, for lack of a  
8 better phrase?

9 A. He wanted to flip homes, and he was -- he was good at  
10 it. But he even worked for a -- people in Fairborn that  
11 owned homes before he went to prison. And he was cleaning  
12 their homes out for them to sell and all that.

13 Q. And while Dean was in prison -- strike that.

14 Did he ever talk to you about his ability to sleep while  
15 he was in prison?

16 A. Yeah. You can't sleep. You had to be afraid of those  
17 around you.

18 Q. Has Dean talked to you about ongoing difficulties  
19 sleeping since he's been released?

20 A. Yeah. He had problems sleeping.

21 Q. Anything about nightmares?

22 A. Yes, he had nightmares. I did too. He had nightmares.  
23 You never get -- you don't have any relief from this. There  
24 is no relief. Your head has got all this stuff in it, all  
25 this ugly stuff. And this side of your head's trying to

1 make sense of it (indicating). And you're just trying to --  
2 you're trying to keep yourself together to be in the middle  
3 of it, just try to keep yourself together.

4 But there's no getting rid of the horrible things that  
5 I heard.

6 Q. Okay.

7 A. There's no getting rid of it.

8 Q. Okay.

9 A. And when I had to do things --

10 THE COURT: Counsel --

11 THE WITNESS: -- over and over again --

12 THE COURT: Counsel, counsel, counsel --

13 THE WITNESS: -- then it all comes back again.

14 THE COURT: Ma'am, you just have to answer the  
15 questions. I'm trying to give a lot of leeway here. But you  
16 have to answer his questions.

17 THE WITNESS: Okay.

18 THE COURT: I understand what you're saying, but  
19 it's --

20 THE WITNESS: Okay.

21 THE COURT: It just has to be him asking you a  
22 question and you answer that question.

23 THE WITNESS: Okay.

24 THE COURT: You have -- Mr. Owens knows what type of  
25 questions and what type of information he wants to obtain from

1 you. So you have to just listen to his questions and just  
2 answer those questions.

3 THE WITNESS: Okay.

4 THE COURT: Okay? Thank you.

5 BY MR. OWENS:

6 Q. All right. Just a couple more things, okay?

7 Did -- since Dean's been out, have you had the ability to  
8 go watch him give speeches and things like that?

9 A. Yes.

10 Q. Okay. And how has it been seeing Dean give speeches and  
11 do other sorts of work in that field?

12 A. I loved it. You guys got these things that tell you  
13 where to go and a map and all that, but I was over here with  
14 a map, and he was driving. So I was telling him where to  
15 go. And so I enjoyed that very much. And I felt very  
16 blessed that he was reaching out and helping others and that  
17 he was making it known that this -- this happens.

18 He went to -- he went to schools -- and I was there  
19 too -- of young children and telling them, and they just --  
20 and they sent -- they sent thank you notes. All the time he  
21 got thank you notes.

22 But he spoke, he spoke -- he has spoke all over the  
23 world. He's been sent all over the world. In this state he  
24 spoke to lawyers and judges. And he helps these guys that's  
25 out.

1       **Q.**     Got it. And when Dean is giving these speeches, has he  
2       been talking about his work with the Ohio Innocence Project  
3       and being wrongfully convicted?

4       **A.**     Yes, uh-huh. The Ohio Innocence Project got him out.

5               MR. OWENS: So no further questions, Your Honor.

6               THE COURT: Thank you.

7               Any questions?

8               MR. McLANDRICH: No, sir, Your Honor.

9               THE COURT: Any questions?

10              MR. HERMAN: No, Your Honor.

11              THE COURT: Ma'am, thank you very much. You're  
12       excused.

13              Counsel approach.

14              (At sidebar off the record.)

15              THE COURT: Ladies and gentlemen, we've come to a  
16       point in time in the trial, and with regard to witnesses, it  
17       would be, I believe, appropriate and advisable to recess for  
18       the day.

19              We've been moving along quite well, and I'm hopeful we're  
20       still within our timelines. So, again, I'm going to ask you  
21       to abide with us and remember your admonitions, ask your  
22       family to still abide by the fact that you can't talk to them  
23       about anything. And, again, like I said, once this is over,  
24       then you have every -- you can talk to them -- you can talk to  
25       anybody about anything.

1           So please remember those admonitions. We'll try to  
2           start -- we will start right at 9 o'clock in the morning. And  
3           like I said, we are moving along pretty well.

4           You may find, however, in the last -- as you did today --  
5           things don't necessarily run like clockwork. Now I take the  
6           blame for some of that, but it's not -- it's not -- there is  
7           no blame to be put on any of the parties or the attorneys.  
8           It's just the fact that a lot of things that need to be done  
9           here need to be done outside your presence, and there are  
10          important questions of law, there's important questions that  
11          need to be answered by the Court before presentation of  
12          evidence.

13          So be patient. Bear with us. I'm attempting to make  
14          sure that everyone gets their say here, gets a fair trial.  
15          So -- and to do that, we need to make some of those breaks.  
16          So it may be a little bit sporadic over the next day or two,  
17          three, but we're doing the best we can.

18          With the thanks of the Court and the party -- well,  
19          first, counsel, do you have anything else?

20                 MR. OWENS: No, Your Honor.

21                 THE COURT: Counsel?

22                 MR. McLANDRICH: No, Your Honor.

23                 THE COURT: Counsel?

24                 MR. HERMAN: No, Your Honor.

25                 THE COURT: We will stand in recess until 9 o'clock

1 tomorrow morning.

2 I will see counsel briefly in chambers.

3 THE COURTROOM DEPUTY: All rise. This court stands  
4 in recess.

5 (Jury out at 3:42 p.m.)

6 (Court adjourned at 3:42 p.m.)

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CERTIFICATE OF REPORTER

I, Mary A. Schweinhagen, Federal Official Realtime Court Reporter, in and for the United States District Court for the Southern District of Ohio, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

s/Mary A. Schweinhagen

\_\_\_\_\_ 21st of December, 2023

MARY A. SCHWEINHAGEN, RDR, CRR  
FEDERAL OFFICIAL COURT REPORTER